

Bijlage 8: Gasunie Guideline on evidence with regard to the exclusion grounds in UEA

1. Introduction

Your organization participates as a candidate or a tenderer in a tender procedure initiated by Gasunie. Part of this tender procedure is the Uniform Europees Aanbestedingsdocument (UEA). Your organization needs to or has completed, signed and submitted an UEA. This UEA is a self-declaration in which a.o. the candidate or tenderer declares whether exclusion grounds apply to its organisation.

2. Dutch procurement act 2012

Pursuant to paragraph 1 of article 3.65 of the Dutch procurement act 2012 ("Aanbestedingswet 2012", hereinafter "AW") Gasunie may require objective requirements and criteria for the exclusion and selection of candidates or tenderers. These requirements and criteria may include the exclusion grounds listed in article 2.86 and 2.87 AW. The means of evidence proving that the applicable exclusion grounds do not apply to the candidate or tenderer are specified in article 2.89 AW. The mentioned articles of the AW are an implementation of articles 78 and 80 of Directive 2014/25/EU and articles 57 and 60 of Directive 2014/24/EU.

3. Requested evidence

In the UEA your organization had made a declaration on whether or not (an) exclusion ground(s) is/are applicable on your organization. Gasunie needs the declaration to be supported by evidence. In the tender documents is stated which evidence is to be provided by your organization upon request.

For your convenience Gasunie provides your organization with this guideline. In this guideline the evidence to be submitted by Dutch companies and the evidence to be submitted by foreign companies is stated. Please note that the administrative or judicial authorities need time to process the request for evidence before the certificate or document can be issued. As such you are advised to start the procedure for obtaining the evidence in time to prevent your organisation not being able to submit the required evidence in time to Gasunie.

Evidence to be submitted by Dutch companies

a. Uittreksel uit het handelsregister van de Kamer van Koophandel

An in the Netherlands established company that participates as a candidate or tenderer in a tender can prove that it is not bankrupt and is not subject of insolvency or winding-up proceedings, where its 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 by providing an extract (which shall not be older than 6 months at the time a request to participate or a tender ultimately needs to be submitted) from the Dutch Trade Register held by the Chambre of Commerce.

b. Gedragsverklaring Aanbesteden

An in the Netherlands established company that participates as a candidate or tenderer in a tender can prove that it is not convicted for committing the in UEA mentioned crimes, not guilty of grave professional misconduct for distortion of competition (as stated in article 2.89 AW) by providing the “Certificate of Conduct for procurement” (“Gedragsverklaring Aanbesteden”, or “GVA”) issued by the Dutch Minister or State Secretary of Security and Justice. This GVA may not be older than 2 years at the time a request to participate or a tender ultimately needs to be submitted.

c. Verklaring betalingsgedrag nakoming fiscale verplichtingen van de Belastingdienst

An in the Netherlands established company that participates as a candidate or tenderer in a tender can prove that it is not in breach of payment of taxes and social security contributions by providing a statement of payment of taxes and mentioned contributions issued by the Dutch Tax and Customs Administration (“Belastingdienst”), which statement shall not be older than 6 months at the time a request to participate or a tender ultimately needs to be submitted.

Evidence to be submitted by foreign companies

If your company has a registered office outside the Netherlands your organisation is not able to provide Gasunie with the evidence of a GVA as requested from Dutch companies. Instead your organisation needs to provide Gasunie with the following evidence (in English language). The following evidence also needs to be submitted in case your organization is not able to provide an extract from the Chambre of Commerce vested in the country of the candidate or tenderer regarding your declaration made in the UEA in relation to bankruptcy, insolvency and winding-up. Regarding the proof that the candidate or tenderer is not in breach of payment of taxes and social security contributions by providing a statement of payment of taxes and mentioned contributions issued by the Tax and Customs Administration or the Social Insurance Institution of the country in which the candidate or tenderer is established needs to be submitted.

I. An equivalent certificate or document

Within the EU the system of [e-Certis](#) provides an overview of certificate(s) or document(s) issued by competent authorities in the country where the candidate or tenderer is established. Such a certificate or document is then to be submitted. Please note that [e-Certis](#) is a reference tool and not a service of legal advice. Therefore it is not guaranteed that the result from a query on [e-Certis](#) and the submittal of a certificate of documents mentioned on [e-Certis](#) is acknowledged as valid by Gasunie. Please always check if the certificate or document provides the proof for the declaration made in the UEA.

If the country where the candidate or tenderer is established does not issue the required certificate(s) or document(s) and/or the certificate or documents don't provide the requested proof of the declaration made in the UEA the candidate or tenderer may provide a declaration on oath ("verklaring onder ede").

II. Declaration on oath ("verklaring onder ede")

This declaration on oath shall be made and signed by the natural person(s) legally authorized to represent the candidate or tenderer before a competent judicial or administrative authority, a notary or a competent professional or trade body in the country where the candidate or tenderer is established. This declaration on oath shall comply with the laws and regulation of the country in which the candidate or tenderer is established.

Please see section 4 of this guideline for the minimum content of the declaration on oath.

III. Solemn declaration ("plechtige verklaring")

In case the country in which the candidate or tenderer is established has no laws and/or regulations or other provisions for declarations on oath the candidate or tenderer may provide a solemn declaration.

This solemn declaration shall be made and signed by the natural person(s) legally authorized to represent the candidate or tenderer before a competent judicial or administrative authority, a notary or a competent professional or trade body in the country where the candidate or tenderer is established. The solemn declaration shall comply with the laws and regulation of the country in which the candidate or tenderer is established.

Please see section 4 of this guideline for the minimum content of the solemn declaration.

4. Minimum content of declaration on oath or solemn declaration

In case a declaration on oath or a solemn declaration is the only way to submit evidence regarding the candidate or tenderer's declaration about the exclusion grounds, either declaration should contain as a minimum the following:

a. with regard to bankruptcy, insolvency and winding-up:

"Tenderer or candidate is not bankrupt and is not the subject of insolvency or winding-up proceedings, where its 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 national laws and regulation."

b. With regard to criminal convictions grave professional misconduct and distortion of competition:

- I. *"Tenderer or candidate, including members of administrative, management or supervisory body of that tenderer or candidate and persons having powers of representation, decision or control therein, has/have not been the subject of a conviction by final judgement for one of the following reasons:*
 - a. *participation in a criminal organisation within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008, L 300);*
 - b. *bribery within the meaning of Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ 1997, C 195) and of Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ 2003, L 192);*
 - c. *fraud within the meaning of Article 1 of the Convention on the protection of the Community's financial interests (OJ 1995, C 316);*
 - d. *money laundering within the meaning of Article 1 of Council Directive No 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (OJ L 1991, L 166) as amended by Directive No 2001/97/EC of the European Parliament and of the Council (OJ L 2001, 344);*
 - e. *terrorist offences or offences linked to terrorist activities within the meaning of Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA of 13 June 2003 on combating terrorism (OJ 2002, L 164);*
 - f. *child labour and other forms of trafficking in human beings within the meaning of Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings (OJEU 2011, L 164).*

and
- II. *Tenderer or candidate is, in view of acts committed or omitted either before or during the tender procedure, not in one of the following situations:*
 - a) *guilty of grave professional misconduct, which renders its integrity questionable; or*
 - b) *entered into agreements with other companies or organisations aimed at distorting competition."*