

STATES OF JERSEY



CONSTRUCTION INDUSTRY: GRANT OF LICENCES

**Lodged au Greffe on 18th February 2003
by the Economic Development Committee**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to refer to their Act dated 23rd November 1994 in which they expressed support for the revised policy of the Finance and Economics Committee relating to the application from non-local contractors or sub-contractors for a licence under Part II of the Regulation of Undertaking and Development (Jersey) Law 1973, as amended, and agreed that such licences should only be granted if the applicants offered a price advantage of at least five per cent, and –

to agree that the rule should be abolished with immediate effect and replaced by the tender process rule as set out in the report of the Economic Development Committee dated 18th February 2003.

ECONOMIC DEVELOPMENT COMMITTEE

REPORT

Current policy

The current policy as set out in paragraphs 26 and 27 of the RUDL policy statement is as follows –

“Where applications are received from non-local contractors/sub-contractors to undertake building work within the Island the Committee will continue to have regard for the need to secure a viable local construction industry to support essential public and private investment, and for the fact that this viability calls for a degree of continuity of work of a varied nature. The Committee will also seek to protect the long term employment and training of Island residents. At the same time the Committee will continue to take into account any cost saving arising from the granting of a licence to a non-local firm.

The general policy of the Committee is to grant licences to non-local contractors where the work is specialist in nature and evidence is provided that the work cannot be undertaken by local firms. Licences will also be granted to non local contractors and sub-contractors when there is a significant price advantage over local firms (currently in excess of 5%). Before responding to such a price advantage the Committee will require evidence that local firms have been invited to quote on a level playing field basis, and receive information on the individual quotes obtained.”

Origins

Although the rule as a policy appears to have been stated publicly only from early 1991, the seeds of the policy were sown by the report of the Policy and Resources Committee on population growth (P.145/89) and had originally been introduced as a 10% differential. Within that report, it was stated that “the granting of licences of private building work under Part III of the RUDL should be further limited, as should the size of the States building programme other than in respect of category A housing. The objectives should be to reduce the number engaged in the construction industry over the next 3 years by some 500, or approximately 10% of the number engaged in the industry at the time of the 1989 Census”. The differential was seen as a way of supporting the local construction industry and retaining taxable profits within the Island.

In March 1994, the Finance and Economics Committee considered the report of the Working Party on the cost of building materials and in particular the recommendation that “the Finance and Economics Committee should abolish its 10% rule” to increase the competitive pressure on the local construction industry from non-local contractors.

On the 25th October 1994 the Finance and Economics Committee lodged au Greffe a Report and Proposition asking the States to express its support for the Committee’s revised policy with effect from 1st January 1995. This stated that applications from non-local contractors or sub-contractors for a licence under Part II of the RUDL should be granted only if those applicants offer a price advantage of at least 5%. This was approved by the States and the 5% differential has been retained since that time as outlined above in the current policy.

Recent events

In July 2001, the Industries Committee issued a consultation paper relating to the possible abolition of the 5% rule relating to non-local contractors. This consultation process was undertaken in order to obtain full information from a broad range of stakeholders and included the Jersey Building and Allied Trades Employers Federation and the Jersey Construction Forum.

Of the responses received, the majority appeared to concur with the views of the Construction Industry Board in opposing the removal of the 5% rule at that time and in isolation. Issues such as tax and social security revenue, encouragement for training and development and a perceived lack of confidence in the local construction industry were highlighted by those who were against the removal of the 5% rule. Furthermore, it was argued by some that such a proposal should be considered during a period of inactivity rather than in the then buoyant market. The Royal Institute of Chartered Surveyors referred to the level of activity in the U.K. and it is true that the 10% rule, as it was initially, was introduced to protect the local construction industry at a time when U.K. firms were short

of work. When, as in recent times, U.K. firms are faced with buoyant trading conditions, there would seem to be no need for the protection.

Those in favour of the abolition saw the 5% rule as serving little purpose and were of the opinion that this would help remove the perception in the Island that the construction industry is uncompetitive and that the cost of building is too high. It was argued that the removal would promote a fully open and competitive tendering process which would improve the image of the industry and remove unnecessary bureaucracy. A further advantage could be a freedom of choice based on quality, speed and safety issues as opposed to just price.

The Industries Committee was also aware of the Report of the Committee of Inquiry into Building Costs which recommended the removal of the 5% rule.

Following consultation, the Industries Committee indicated its desire to see the removal of the 5% rule but in accordance with advice received from the Chairman of the Construction Industry Board, agreed that the abolition of the 5% rule had to be considered in conjunction with the formation of the Construction Industry Strategy.

The Construction Industry Strategy was approved by the Industries Committee in late November 2002 and presented to the States on 17th December 2002 (R.C.51/2002).

During the years 2001 and 2002 respectively, 19 and 21 licences were granted under RUDL to non-local contractors/sub-contractors where the tender process had been undertaken and the non-local tender was at least 5% cheaper than local undertakings. The Regulation of Undertakings and Development Office is not aware how many non-local contractors applied to tender for projects during those years nor how many had been eliminated from the tendering process because of the policy as, obviously, if a tender process had been undertaken and the local business was successful, no application would be required under RUDL.

Conclusion

The Economic Development Committee's overall philosophy is to deregulate and create a more competitive business environment wherever possible. The proposal to abolish the 5% rule has been decided upon following consultation and in conjunction with the formation of the recently published Construction Industry Strategy which will seek to protect the long-term employment and training of Island residents.

The removal of the 5% rule will also help change the perception in the Island that the construction industry is uncompetitive and improve the image of the construction industry. Furthermore, it will give consumers a freedom of choice based on quality, speed and safety issues as opposed to just price.

A licence will still be required under the RUDL for a non-local contractor/sub-contractor wishing to undertake building work within the Island. The general policy of the Committee will be to grant licences provided that evidence is produced that local firms have been given the opportunity to tender on a level playing field basis or that the work to be undertaken is specialist in nature and evidence is provided that the work cannot be undertaken by local firms. This will be known as the **"tender process rule"**.

In reaching this proposal, the Economic Development Committee considered the recommendation contained in the Committee of Inquiry into Building Costs Report (R.C.32/2002), the comments of the Construction Industry Board and the responses received from interested parties in relation to the consultation document issued by the Industries Committee in July 2001.

There are no additional financial or manpower implications for the States arising from this proposition.

18th February 2003