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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

**The Utilities Contracts (Scotland) Regulations 2016**

**PART 2**

**RULES APPLICABLE TO CONTRACTS**

**CHAPTER 3**

**CONDUCT OF THE PROCEDURE**

*SECTION 3*

*Choice of participants and award of contracts*

SUB-SECTION 1 Qualification and qualitative selection

**Reliance on the capacities of other entities**

77.—(1) This regulation applies where there are objective rules and criteria for the exclusion and selection of—

- (a) economic operators requesting qualification in a qualification system; or
- (b) candidates and tenderers in open, restricted or negotiated procedures, competitive dialogues or innovation partnerships.

(2) Where the objective rules and criteria for the exclusion and selection of those referred to in paragraph (1) include requirements relating to the economic operator's economic and financial capacity or technical and professional abilities, an economic operator may, where necessary rely upon the capacities of other entities, regardless of the legal nature of the links which it has with them.

(3) With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to relevant professional experience, economic operators may only rely upon the capacities of other entities where the latter will perform the works or services for which these capacities are required.

(4) Where an economic operator wants to rely upon the capacities of other entities, it must prove to the utility that the necessary resources will be available to it, for example by producing a commitment by those entities to that effect.

(5) For the purposes of paragraph (4), an economic operator requesting qualification in a qualification system must prove that the necessary resources will be available to it throughout the period of the qualification system.

(6) Where, in accordance with regulation 78 (use of exclusion grounds and selection criteria provided for under the Public Contracts (Scotland) Regulations), a utility has referred to exclusion or selection criteria provided for under the Public Contracts (Scotland) Regulations, the utility must verify, in accordance with the provisions applied by regulation 78(4)—

- (a) whether the other entities upon whose capacity the economic operator intends to rely fulfil the relevant selection criteria; or

(b) whether there are grounds for exclusion, to which the utility has referred, under regulation 58 of the Public Contracts (Scotland) Regulations.

(7) The utility—

(a) must require the economic operator to replace an entity which does not meet a relevant selection criterion or in respect of which there are compulsory grounds for exclusion; and

(b) may require the economic operator to substitute an entity in respect of which there are non-compulsory grounds for exclusion.

(8) Where an economic operator relies upon the capacities of other entities with regard to criteria relating to economic and financial standing, the utility may require the economic operator and those entities to be jointly liable for the performance of the contract.

(9) A group of economic operators as referred to in regulation 35(4) (economic operators) may rely upon the capacities of participants in the group or of other entities, and paragraphs (1) to (8) apply in relation to such a group in the same way that they apply in relation to an economic operator.

(10) In the case of works contracts, supply contracts requiring siting or installation work and services contracts, a utility may require certain critical tasks to be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators as referred to in regulation 35(4) (economic operators), by a participant in that group.