
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts 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

79.—(1) Where the 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, in competitive dialogues or in innovation partnerships,

include requirements relating to the economic and financial capacity of the economic operator, or its technical and professional abilities, the economic operator may, where necessary, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them, subject to the following provisions of this regulation.

(2) 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 however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

(3) Where an economic operator wants to rely on the capacities of other entities, it shall 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.

(4) For the purposes of paragraph (3), an economic operator requesting qualification in a qualification system shall prove that the necessary resources will be available to it throughout the period of validity of the qualification system.

(5) Where, in accordance with regulation 80, utilities have referred to exclusion or selection criteria provided for under the Public Contracts Regulations, utilities shall verify, in accordance with regulation 80(4), whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the utilities have referred, under regulation 57 of the Public Contracts Regulations and,

- (a) the utility shall require that the economic operator replaces an entity in respect of which there are compulsory grounds for exclusion to which the utility has referred; and

Changes to legislation: The Utilities Contracts Regulations 2016, Section 79 is up to date with all changes known to be in force on or before 09 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

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

(7) A group of economic operators within the meaning of regulation 37(3) may rely on the capacities of participants in the group or of other entities, and paragraphs (1) to (6) apply in relation to such a group in the same way that they apply in relation to an economic operator.

(8) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, utilities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators within the meaning of regulation 37(3), by a participant in that group.

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 54 Sch. 11 para. 7](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 21(1)(c)(i)(aa) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 21(1)(c)(i)(bb) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))