

Status: This version of this provision is prospective.

Changes to legislation: Procurement Act 2023, Section 22 is up to date with all changes known to be in force on or before 15 August 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



Procurement Act 2023

2023 CHAPTER 54

PART 3

AWARD OF PUBLIC CONTRACTS AND PROCEDURES

CHAPTER 2

COMPETITIVE AWARD

Terms of a procurement

PROSPECTIVE

22 Conditions of participation

- (1) A contracting authority may set conditions of participation in relation to the award of a public contract under section 19 only if it is satisfied that the conditions are a proportionate means of ensuring that suppliers have—
 - (a) the legal and financial capacity to perform the contract, or
 - (b) the technical ability to perform the contract.
- (2) A “condition of participation” is a condition that a supplier must satisfy if the supplier is to be awarded the public contract.
- (3) A condition set under subsection (1)(a) may not—
 - (a) require the submission of audited annual accounts, except from suppliers who are, or were, required to have the accounts audited in accordance with Part 16 of the Companies Act 2006 or an overseas equivalent;
 - (b) require insurance relating to the performance of the contract to be in place before the award of the contract.

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- (4) A condition set under subsection (1)(b) may relate to suppliers' qualifications, experience or technical ability, but may not—
 - (a) require suppliers to have been awarded a contract by a particular contracting authority,
 - (b) break the rules on technical specifications in section 56, or
 - (c) require particular qualifications without allowing for their equivalents.
- (5) When considering whether a condition is proportionate for the purposes of subsection (1), a contracting authority must have regard to the nature, complexity and cost of the public contract.
- (6) A condition of participation may require the provision of evidence that is verifiable by a person other than the supplier.
- (7) If a supplier does not satisfy a condition of participation, the contracting authority may exclude the supplier from participating in, or progressing as part of, the competitive tendering procedure.
- (8) A supplier is to be treated as satisfying a condition of participation to the extent that a supplier associated with the supplier satisfies the condition.
- (9) For the purposes of this section, a supplier is associated with another supplier if—
 - (a) the suppliers are submitting a tender together, or
 - (b) the contracting authority is satisfied that the suppliers will enter into legally binding arrangements to the effect that—
 - (i) the supplier will sub-contract the performance of all or part of the contract to the other, or
 - (ii) the other supplier will guarantee the performance of all or part of the contract by the supplier.

Commencement Information

II S. 22 not in force at Royal Assent, see [s. 127\(2\)](#)

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Changes and effects yet to be applied to :

- s. 22 coming into force by [S.I. 2024/716 Sch.](#)

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

- Act excluded by [S.I. 2024/692 reg. 43](#)

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

- s. 115A inserted by [S.I. 2024/692 reg. 47\(3\)](#)
- Sch. 9A inserted by [S.I. 2024/692 reg. 47\(4\)](#)