



# Procurement Act 2023

## 2023 CHAPTER 54

### PART 3

#### AWARD OF PUBLIC CONTRACTS AND PROCEDURES

### CHAPTER 2

#### COMPETITIVE AWARD

#### *Terms of a procurement*

## 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.
- (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,

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*Status: This is the original version (as it was originally enacted).*

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- (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.