

Briefing Note

The Utilities Contracts Regulations 2006

Mandatory Exclusion of Economic Operators

In March this year, guidance was published on the mandatory requirement for utilities to exclude any “economic operator”¹ from contracts where they have been convicted of certain offences. The Utilities Contracts Regulations 2006 require the utility not to select an economic operator where they have actual knowledge that the economic operator has been convicted of any of the offences as identified at Regulation 26 of the Utilities Contracts Regulations 2006.

The practical implications of this is that a utility should, as a minimum, require a declaration from economic operators either in the pre-qualification or in the invitation to tender/negotiate documents, confirming that they have not been convicted of any of the Regulation 26 offences. Where a utility receives a response which is incomplete or unclear, then it should first require further clarification from the economic operator. If the utility is still not satisfied by the response, then the utility must make its own enquiries.

The procedure for obtaining disclosure of convictions, which may be Basic or Standard, is not covered here as the need to obtain such information should be infrequent. If such a need arises, then further guidance can be obtained by contacting: johns@fpaconsulting.co.uk

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¹ Economic operator means a contractor, a supplier or a service provider. It does not include subsidiary companies or sub contractors to an economic operator.



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