
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 3

PARTICULAR PROCUREMENT REGIMES

CHAPTER 1

SOCIAL AND OTHER SPECIFIC SERVICES

Award of contracts for social and other specific services

88. A contract or framework for social and other specific services listed in Schedule 2 (social and other specific services) must be awarded in accordance with this Chapter, where the estimated value of the contract or framework is equal to or greater than the threshold indicated in regulation 15(1)(c) (thresholds).

Publication of notices

89.—(1) A utility intending to award a contract or framework for the services referred to in regulation 88 (award of contracts for social and other specific services) must make known its intention by means of—

- (a) a contract notice;
- (b) a periodic indicative notice, which must—
 - (i) be published continuously;
 - (ii) refer specifically to the types of services that will be the subject of the contract or framework to be awarded; and
 - (iii) indicate that the contract or framework will be awarded without further publication and invite interested economic operators to express their interest in writing; or
- (c) a notice on the existence of a qualification system, which must be published continuously.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior call for competition could have been used in accordance with regulation 48 (use of the negotiated procedure without prior call for competition) for the award of the contract or framework.

(3) A utility that has awarded a contract or framework for the services referred to in regulation 88 (award of contracts for social and other specific services) must make known the results of the procurement by means of a contract award notice.

(4) A utility may, however, group notices referred to in paragraph (3) on a quarterly basis, in which case it must send the grouped notices within 30 days of the end of each quarter.

(5) The notices referred to in paragraphs (1), (3) and (4) must contain the information referred to in the relevant part of Annex XVIII to the Utilities Contracts Directive.

(6) A utility must send the notices referred to in paragraphs (1), (3) and (4) for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level).

Principles of awarding contracts

90.—(1) A utility must determine the procedure that is to be applied in connection with the award of a contract or framework subject to this Chapter and may take into account—

- (a) the specificities of the services in question; and
- (b) the requirements and needs of users.

(2) The procedure must be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) The procedure may provide for the exclusion from participation in the procurement of any economic operator in relation to which exclusion grounds referred to in regulation 58 of the Public Contracts (Scotland) Regulations apply on the terms set out in that regulation.

(4) Where the utility is a contracting authority, the procedure must provide for the exclusion from participation in the procurement of any economic operator in relation to which exclusion grounds referred to in regulation 58(1) to (3) of the Public Contracts (Scotland) Regulations apply on the terms set out in that regulation.

(5) Where, in accordance with regulation 89 (publication of notices), a contract notice or periodic indicative notice has been published in relation to a procurement, the utility must, except in the circumstances mentioned in paragraph (6), conduct that procurement, and award any resulting contract or framework, in conformity with the information contained in the notice about—

- (a) conditions for participation;
- (b) time limits for contacting the utility; and
- (c) the award procedure to be applied.

(6) The utility may, however, conduct the procurement, and award any resulting contract or framework, in a way which is not in conformity with that information, but only if all of the following conditions are met—

- (a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;
- (b) the utility has—
 - (i) after giving due consideration to the matter, concluded that sub-paragraph (a) is applicable;
 - (ii) documented that conclusion and the reasons for it in accordance with regulation 96(5) and (6) (reporting and documentation requirements); and
 - (iii) informed the participants of the respects in which the utility intends to proceed in a way which is not in accordance with the information contained in the notice.

(7) In paragraph (6)(b)(iii), “participants” means any economic operators which have responded to the notice and not been informed by the utility that they are no longer under consideration for the award of a contract within the scope of the procurement concerned.

(8) All time limits imposed upon economic operators for the purposes of this regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, must be reasonable and proportionate having regard to the nature of the requirement and the needs of service users.

(9) Without prejudice to the generality of paragraph (1), a utility may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features otherwise provided for in these Regulations, as well as procedures which do not.

(10) In relation to the award of contracts subject to this regulation, a utility may take into account—

- (a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- (b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- (c) the involvement and empowerment of users;
- (d) innovation; and
- (e) any other relevant consideration.

(11) A utility which is a person mentioned in regulation 4(1)(a) (utilities) must award a contract or framework for services listed in Schedule 2 (social and other specific services) on the basis of the tender representing the best price-quality ratio, taking into account quality and sustainability criteria for such services.

CHAPTER 2

RULES GOVERNING DESIGN CONTESTS

Scope of Chapter

91. This Chapter applies to—

- (a) design contests organised as part of a procedure leading to the award of a service contract provided that the estimated value net of VAT of the service contract including any possible prizes or payments to participants is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds); and
- (b) design contests where the total estimated value net of VAT of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded in accordance with regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) if the utility does not exclude such an award in the contest notice, is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds).

Notices

92.—(1) A utility that intends to carry out a design contest must call for competition by means of a contest notice which includes the information set out in Annex XIX to the Utilities Contracts Directive.

(2) Where a utility intends to award a subsequent service contract under regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) this must be indicated in the contest notice.

(3) A utility that has held a design contest must—

- (a) make the results known by means of a notice which must include the information set out in Annex XX to the Utilities Contracts Directive; and
- (b) send such notice to the EU Publications Office within 30 days of the closure of the design contest.

(4) A utility may withhold from publication information on the result of the contest where the release of the information—

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the commercial interests of any person; or
- (c) might prejudice fair competition between economic operators.

(5) The utility must send the notices referred to in this regulation for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level).

Rules on the organisation of design contests and the selection of participants and the jury

93.—(1) When organising a design contest, a utility must apply procedures which are adapted to the provisions of Part 1 and this Chapter.

(2) The utility must not limit admission of participants to a design contest by reference to the territory or part of the territory of a member State.

(3) Where a design contest is restricted to a limited number of participants, the utility must—

(a) lay down clear and non-discriminatory selection criteria; and

(b) ensure that the number of candidates invited to participate is sufficient to ensure genuine competition in so far as there are enough qualified candidates.

(4) A utility must appoint a jury which must be composed exclusively of natural persons who are independent participants in the contest.

(5) Where a particular professional qualification is required of participants in a contest at least a third of the jury members must have that qualification or an equivalent qualification.

Decisions of the jury

94.—(1) The jury must be autonomous in its decisions and opinions.

(2) The jury must examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury must record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(4) Anonymity must be observed until the jury has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.

(6) Complete minutes must be drawn up of the dialogue between jury members and candidates.