
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 3

CONDUCT OF THE PROCEDURE

SECTION 1

Preparation

Prior involvement of candidates or tenderers

57.—(1) A utility must take appropriate measures to ensure that competition is not distorted by the participation of a candidate or tenderer where that candidate or tenderer, or an undertaking related to that candidate or tenderer—

- (a) has advised the utility, whether in the context of regulation 56 (preliminary market consultation) or not; or
- (b) has otherwise been involved in the preparation of the procurement.

(2) Such measures must include—

- (a) the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement; and
- (b) the fixing of adequate time limits for the receipt of tenders.

(3) A candidate or tenderer in a situation referred to in paragraph (1) may only be excluded from the procedure for the purposes of paragraph (1) where there are no other means to ensure compliance with the duty referred to in regulation 34(1) (principles of procurement).

(4) Prior to any such exclusion, a candidate or tenderer must be given the opportunity to prove that their involvement in preparing the procurement is not capable of distorting competition.

(5) The measures taken must be documented in the report referred to in regulation 96 (reporting and documentation requirements).