
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 4

Tenders comprising products originating in third countries and relations with those countries

Tenders comprising products originating in third countries

83.—(1) This regulation applies to tenders covering products originating in third countries with which the EU has not concluded, whether multilaterally or bilaterally, an agreement ensuring comparable and effective access for EU undertakings to the markets of those third countries.

(2) For the purposes of this regulation—

- (a) the origin of products must be determined in accordance with [Council Regulation \(EEC\) No 2913/92](#) establishing the Community Customs Code⁽¹⁾ as amended from time to time;
- (b) software used in telecommunications network equipment must be regarded as products; and
- (c) those third countries to which the benefits of the Utilities Contracts Directive has been extended by an EU Council Decision, must not be taken into account by a utility for determining the proportion, referred to in paragraph (3), of products originating in third countries.

(3) A utility may reject any tender submitted for the award of a supply contract where the proportion of the products originating in third countries is greater than 50% of the total estimated value of the products constituting the tender.

(4) Subject to paragraph (5), where two or more tenders are equivalent in the light of the contract award criteria defined in accordance with regulation 80 (contract award criteria) the utility must give preference to those tenders which may not be rejected in accordance with paragraph (3).

(5) Paragraph (4) does not apply where acceptance of such tender would oblige the utility to acquire equipment having technical characteristics different from those of existing equipment, resulting in—

- (a) incompatibility;
- (b) technical difficulties in operation and maintenance; or

(1) OJ L 302, 19.10.1992, p.1; Regulation as last amended by Council Regulation (EU) No 517/2013 of 13th May 2013 (OJ L 158, 10.6.2013, p.1.

(c) disproportionate costs.

(6) For the purposes of paragraph (4), tenders must be considered equivalent if the price difference between those tenders does not exceed 3%.