
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 5

REMEDIES

CHAPTER 1

FACILITATION OF REMEDIES

Notices of decisions to award a contract or conclude a framework agreement

98.—(1) Subject to paragraphs (4) and (5), a utility must, by notice in writing as soon as possible after the decision has been made, inform all tenderers and candidates concerned of its decision to award the contract, conclude the framework agreement or establish a dynamic purchasing system.

(2) The notice referred to in paragraph (1) must include—

- (a) the criteria for the award of the contract, conclusion of the framework agreement or establishment of the dynamic purchasing system;
- (b) where practicable, the score obtained by the economic operator which is to receive the notice;
- (c) the name of and, where practicable, the score obtained by the economic operator—
 - (i) to be awarded the contract;
 - (ii) to become a party to the framework agreement; or
 - (iii) to be admitted to the dynamic purchasing system;
- (d) in the case of an unsuccessful tenderer—
 - (i) a summary of the reasons why the tenderer was unsuccessful; and
 - (ii) the characteristics and relative advantages of the successful tender;
- (e) in the case of an unsuccessful candidate concerned, a summary of the reasons why the candidate was unsuccessful; and
- (f) a precise statement of the effect of regulation 99 (standstill period) on the economic operator which is to receive the notice.

(3) The reasons referred to in paragraph (2)(d)(i) and (e) must include any reason for the utility's decision that the economic operator did not meet the technical specifications—

- (a) because compliance with a specification mentioned in regulation 58(13) (technical specifications) does not address the performance or functional requirements laid down by the utility; or
- (b) in an equivalent manner as mentioned in regulation 58(14) (technical specifications).

(4) Paragraph (1) does not apply where—

- (a) the only tenderer is the economic operator to be awarded the contract or to become a party to the framework agreement, and there are no candidates concerned;

- (b) the contract is a contract awarded under a framework agreement or a dynamic purchasing system; or
 - (c) the contract or framework agreement is exempt from the requirement for prior publication of a call for competition.
- (5) A utility may withhold any information to be provided in accordance with the preceding requirements of this regulation where the release of such information—
- (a) would impede law enforcement or would otherwise be contrary to the public interest;
 - (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private; or
 - (c) might prejudice fair competition between economic operators.
- (6) Subject to paragraph (5), a utility must within 15 days of the date on which it receives a request in writing from any economic operator—
- (a) if it was unsuccessful, inform that economic operator of the reasons why it was unsuccessful, including any reason referred to in paragraph (3);
 - (b) in the case of an unsuccessful tenderer, other than a tenderer which has been informed by notice under paragraph (1), inform that tenderer of the characteristics and relative advantages of the successful tender and the name of—
 - (i) the economic operator to be awarded the contract;
 - (ii) the parties to the framework agreement; or
 - (iii) the economic operators admitted to the dynamic purchasing system; and
 - (c) if it was successful, a description of any improvements the utility considers the tenderer could have made to its tender.
- (7) Subject to paragraph (5), a utility must by notice in writing, as soon as possible after the decision has been made, inform all candidates and tenderers of its decision to abandon or recommence a contract award procedure in respect of which a call for competition has been published in relation to—
- (a) the award of a contract;
 - (b) the conclusion of a framework agreement; or
 - (c) the establishment of a dynamic purchasing system.
- (8) Where a utility provides information in accordance with paragraph (7) it must include the reasons for its decision and, if so requested by an economic operator, must provide the information and reasons in writing.
- (9) In this regulation—
- “candidate” means a candidate, as defined in regulation 2(1) (interpretation), which—
- (a) is not a tenderer; and
 - (b) has not been informed of the rejection of its application and the reasons for it; and
- “tenderer” means a tenderer, as defined in regulation 2(1) (interpretation), which has not been definitively excluded.
- (10) For the purposes of paragraph (9), an exclusion is definitive only if the tenderer has been notified of the exclusion and either—
- (a) the exclusion has been held to be lawful in proceedings under Chapter 2 of this Part (applications to the court); or

- (b) the time limit for starting such proceedings has expired even on the assumption that the court would have granted the maximum extension permitted by regulation 101(4) (enforcement of duties through the courts).