
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 3

Conduct of the procedure

SECTION 1

Preparation

Technical specifications

60.—(1) The technical specifications shall be set out in the procurement documents.

Scope of the technical specifications

(2) The technical specifications shall lay down the characteristics required of works, services or supplies.

(3) In these Regulations, “technical specification” means—

- (a) in the case of works contracts, the totality of the technical prescriptions contained in the procurement documents, defining the characteristics required of a material, product or a supply, which permits a material, a product or a supply to be described in a manner such that it fulfils the use for which it is intended by the utility;
- (b) in the case of service or supply contracts, a specification in a document defining the required characteristics of a product or a service, such as quality levels, environmental and climate performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods at any stage of the life cycle of the supply or service and conformity assessment procedures.

(4) The characteristics referred to in paragraph (3)(a) may include—

- (a) levels of environmental and climate performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, and production processes and methods at any stage of the life cycle of the works;
- (b) rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all other technical conditions which

the utility is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

- (5) For the purposes of paragraph (3), the required characteristics may also refer to—
- (a) the specific process or method of production or provision of the requested works, supplies or services; or
 - (b) a specific process for another stage of its life cycle,

even where such factors do not form part of their material substance, provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.

(6) The technical specifications may also specify whether the transfer of intellectual property rights will be required.

Formulating the technical specifications

(7) For all procurement which is intended for use by natural persons, whether the general public or staff of the utility, the technical specifications shall, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.

(8) Where mandatory accessibility requirements are [^{F1}imposed by retained EU law], technical specifications shall, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.

(9) Technical specifications shall afford equal access of economic operators to the procurement procedure and shall not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(10) Without prejudice to mandatory national technical rules, to the extent that they are compatible with [^{F2}retained]EU law, the technical specifications shall be formulated in one of the following ways—

- (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow utilities to award the contract;
- (b) by reference to technical specifications and, in order of preference, to—
 - (i) national standards transposing European standards;
 - (ii) European Technical Assessments;
 - (iii) common technical specifications;
 - (iv) international standards;
 - (v) other technical reference systems established by the European standardisation bodies; or
 - (vi) when none of the above exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies,

but each reference shall be accompanied by the words “or equivalent”;

- (c) in terms of performance or functional requirements referred to in sub-paragraph (a), with reference to the technical specifications referred to in sub-paragraph (b) as a means of presuming conformity with such performance or functional requirements;
- (d) by reference to the technical specifications referred to in sub-paragraph (b) for certain characteristics, and by reference to the performance or functional requirements referred to in sub-paragraph (a) for other characteristics.

(11) Unless justified by the subject-matter of the contract, technical specifications shall not refer to a specific make or source, or to a particular process which characterises the products or services

provided by a specific economic operator, or to trade marks, patents, types or a specific origin or production with the effect of favouring or eliminating certain undertakings or certain products.

(12) But such reference shall be permitted on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract in accordance with paragraph (10) is not possible, in which case the reference shall be accompanied by the words “or equivalent”.

Applying the technical specifications

(13) Where a utility uses the option of referring to the technical specifications referred to in paragraph (10)(b), it shall not reject a tender on the ground that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, once the tenderer proves in its tender, by any appropriate means, including the means of proof referred to in regulation 62, that the solutions proposed satisfy in an equivalent manner the requirements defined by the technical specifications.

(14) Where a utility uses the option provided for in paragraph (10)(a) to formulate technical specifications in terms of performance or functional requirements, it shall not reject a tender for works, supplies or services which comply with a national standard transposing a European standard, a European technical approval, a common technical specification, an international standard or a technical reference system established by a European standardisation body, where those address the performance or functional requirements which it has laid down.

(15) In its tender, the tenderer shall prove by any appropriate means including those referred to in regulation 62, that the work, supply or service in compliance with the standard meets the performance or functional requirements of the utility.

(16) In this regulation—

“common technical specification” means a technical specification in the field of information and communication technology laid down in accordance with Articles 13 and 14 of Regulation (EU) 1025/2012 of the European Parliament and of the Council ^{M1}[^{F3}as it has effect in EU law] as amended from time to time;

“European Technical Assessment” means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the respective European Assessment Document as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and the Council ^{M2} as amended from time to time;

“technical reference” means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs.

Textual Amendments

- F1** Words in [reg. 60\(8\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), [10\(37\)\(a\)](#) (with [Sch. paras. 3-5](#))
- F2** Word in [reg. 60\(10\)](#) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), [10\(37\)\(b\)](#) (with [Sch. paras. 3-5](#))
- F3** Words in [reg. 60\(16\)](#) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), [regs. 1\(2\)](#), [10\(37\)\(c\)](#) (with [Sch. paras. 3-5](#))

Marginal Citations

- M1** OJ No L 316, 14.11.2012, p12.
- M2** OJ No L 88, 4.4.2011,p5, last amended by Directive 2014/68/EU of the European Parliament and of the Council (OJ No L 189, 27.6.2014,p164).

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Utilities Contracts Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 54 Sch. 11 para. 7](#)
- reg. 60(8) words substituted by [S.I. 2019/560 reg. 9\(37\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 60(8) words substituted by [S.I. 2024/80 Sch. para. 4\(7\)\(a\)](#)
- reg. 60(10) words omitted by [S.I. 2019/560 reg. 9\(37\)\(b\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 60(10) words substituted by [S.I. 2024/80 Sch. para. 4\(7\)\(b\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 20(2)(2A) substituted for reg. 20(2) by [2024 c. 6 Sch. para. 9\(3\)](#)
- reg. 20(5) inserted by [2024 c. 6 Sch. para. 9\(6\)](#)
- reg. 21(1)(c)(i)(aa) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 21(1)(c)(i)(bb) words substituted by [S.I. 2019/560 reg. 9\(12\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Affecting Regulations revoked (20.11.2020) by S.I. 2020/1319, regs. 1(3), 2(a))
- reg. 70(2)(a)(iiia) inserted by [2024 c. 6 Sch. para. 10](#)