
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).

Commencement Information

II [Reg. 88](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

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;

^{F1}(b)

(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 [^{F2}submit] 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^{F3}, but as if, in paragraph 4 of part D, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Utilities Contracts (Scotland) Regulations 2016)].

Changes to legislation: The Utilities Contracts (Scotland) Regulations 2016, CHAPTER 1 is up to date with all changes known to be in force on or before 23 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(6) A utility must [^{F4}submit] the notices referred to in paragraphs (1), (3) and (4) for publication in accordance with regulation 69 ([^{F5}publication on the UK e-notification service]).

Textual Amendments

- F1** Reg. 89(1)(b) omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **5(22)** (with reg. 3)
- F2** Word in reg. 89(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(51)(a)** (with sch. paras. 1-5)
- F3** Words in reg. 89(5) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(51)(b)** (with sch. paras. 1-5)
- F4** Word in reg. 89(6) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(51)(c)(i)** (with sch. paras. 1-5)
- F5** Words in reg. 89(6) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **6(51)(c)(ii)** (with sch. paras. 1-5)

Commencement Information

- I2** Reg. 89 in force at 18.4.2016, see **reg. 1(2)**

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 ^{F6}... 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—

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- (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.

Textual Amendments

F6 Words in [reg. 90\(5\)](#) omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), [regs. 2, 5\(23\)](#) (with [reg. 3](#))

Commencement Information

I3 [Reg. 90](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(b\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)

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):

- Pt. 5A inserted by [S.S.I. 2019/112 reg. 5\(61\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 3(2)-(2C) substituted for reg. 3(2) by [S.S.I. 2019/112 reg. 5\(3\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 15A inserted by [S.S.I. 2019/112 reg. 5\(7\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 38A inserted by [S.S.I. 2019/112 reg. 5\(26\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) reg. 41 renumbered as reg. 41(1) by [S.S.I. 2019/112 reg. 5\(27\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words omitted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 5(27)(b)(i) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(aa) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 5(27)(b)(ii) omitted by virtue of S.S.I. 2019/114, reg. 2(5)(a)(ii)(bb))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(iii\)](#) (This amendment not applied to [legislation.gov.uk](#). Reg. 5(27)(b)(iii) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(cc) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(i) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(iii) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))

- reg. 41(2) inserted by [S.S.I. 2019/112 reg. 5\(27\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 50(25)(25A) substituted for reg. 50(25) by [S.S.I. 2019/112 reg. 5\(33\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 66(2A) inserted by [S.S.I. 2019/112 reg. 5\(38\)\(b\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 69(5)(6) inserted by [S.S.I. 2019/112 reg. 5\(41\)\(f\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 74(6A)-(6C) inserted by [S.S.I. 2019/112 reg. 5\(44\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(3)(3A) substituted for reg. 100(3) by [S.S.I. 2019/112 reg. 5\(58\)\(c\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 100(4A) inserted by S.S.I. 2019/112, reg. 5(58)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(c\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))