
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 2

Publication and transparency

Informing applicants for qualification, candidates and tenderers

73.—(1) A utility must as soon as possible after reaching a decision concerning the award of a contract, the conclusion of a framework agreement or admittance to a dynamic purchasing system, inform each candidate and tenderer of the decision reached.

(2) Information provided in accordance with paragraph (1) must, where applicable, include the grounds for any decision—

- (a) not to conclude a framework agreement;
- (b) not to award a contract for which there has been a call for competition;
- (c) to recommence the procedure; or
- (d) not to implement a dynamic purchasing system.

(3) On request from the candidate or tenderer concerned, the utility must as soon as possible, and in any event within 15 days from receipt of a written request, inform—

- (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
- (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 58(13) and (14) (technical specifications), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;
- (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement; and
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(4) A utility may decide to withhold certain information referred to in paragraphs (2) and (3), where the release of such information—

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the commercial interests of any person; or

- (c) might prejudice fair competition between economic operators.
- (5) A utility which establishes and operates a system of qualification must—
 - (a) inform applicants of its decision as to qualification within a period of 6 months;
 - (b) if the decision as to qualification will take longer than 4 months from the presentation of an application, inform the applicant within 2 months of the application of—
 - (i) the reasons justifying the longer period; and
 - (ii) the date by which the application will be accepted or refused;
 - (c) inform applicants whose qualification is refused of the refusal decision and the reasons for that decision as soon as possible and no more than 15 days after the date of the refusal decision.
- (6) A utility which establishes and operates a system of qualification must—
 - (a) base its reasons for decisions as to qualification on the criteria for qualification referred to in regulation 75(3) to (5) (qualification systems); and
 - (b) only bring the qualification of an economic operator to an end for reasons based on the criteria for qualification referred to in regulation 75(3) to (5) (qualification systems).
- (7) Any intention to bring the qualification of an economic operator to an end must be notified in writing to the economic operator at least 15 days before the date on which the qualification is due to end, together with the reasons justifying the proposed action.