
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 3

Conduct of the procedure

SECTION 3

Choice of participants and award of contracts

General principles

76.—(1) For the purpose of selecting participants in their procurement procedures, the following rules shall apply—

- (a) utilities which have provided rules and criteria for the exclusion of tenderers or candidates in accordance with regulations 78(1) or 80(1), shall exclude economic operators identified in accordance with such rules and fulfilling such criteria;
- (b) utilities shall select tenderers and candidates in accordance with the objective rules and criteria mentioned in regulations 78 and 80;
- (c) utilities shall, where appropriate and in accordance with regulation 78(3) and (4), reduce the number of candidates selected in accordance with paragraphs (a) and (b) in:—
 - (i) restricted procedures;
 - (ii) negotiated procedures with a call for competition;
 - (iii) competitive dialogues; and
 - (iv) innovation partnerships.

(2) When a call for competition is made by means of a notice on the existence of a qualification system and for the purpose of selecting participants in procurement procedures for the specific contracts which are the subject of the call for competition, utilities shall—

- (a) qualify economic operators in accordance with regulation 77;
- (b) apply to such qualified economic operators those provisions of paragraph (1) that are relevant to restricted or negotiated procedures, to competitive dialogues or to innovation partnerships.

(3) When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching their decision as to qualification or when the criteria and rules are being updated, utilities shall not—

- (a) impose administrative, technical or financial conditions on certain economic operators which would not be imposed on others;

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(b) require tests or evidence which would duplicate objective evidence already available.

(4) Where information or documentation to be submitted by economic operators is or appears to be incomplete or erroneous, or where specific documents are missing, utilities may request the economic operators concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.

(5) Utilities shall verify that the tenders submitted by the selected tenderers comply with the rules and requirements applicable to tenders and award the contract on the basis of the criteria laid down in regulations 82 and 84, taking into account regulation 64.

(6) Utilities may decide not to award a contract to the tenderer submitting the best tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by ^{F1}... national law, collective agreements or [^{F2}, subject to paragraphs (6A) and (6B)] by the international environmental, social and labour law provisions listed in Annex XIV to the Utilities Contracts Directive as amended from time to time.

[^{F3}(6A) Where—

- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
- (b) the agreement is not already listed,

the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were listed.

(6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Minister for the Cabinet Office may make regulations providing that paragraph (6) is to have effect as if the agreement were not listed.

(6C) In paragraphs (6A) and (6B)—

- (a) “listed” means listed as described in paragraph (6), and
- (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.]

(7) In open procedures, utilities may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of this regulation and regulations 77 to 84 are observed.

Textual Amendments

- F1** Words in reg. 76(6) omitted (31.12.2020) by virtue of The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(45)(a)** (with Sch. paras. 3-5)
- F2** Words in reg. 76(6) inserted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(45)(b)** (with Sch. paras. 3-5)
- F3** Reg. 76(6A)-(6C) inserted (31.12.2020) by The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1319), regs. 1(2), **10(45)(c)** (with Sch. paras. 3-5)

SUB-SECTION 1 *Qualification and qualitative selection*

Qualification systems

77.—(1) Utilities may establish and operate a system of qualification of economic operators.

(2) Utilities which establish or operate a system of qualification shall ensure that economic operators are at all times able to request qualification.

(3) The system under paragraph (1) may involve different qualification stages.

- (4) Utilities shall establish objective rules and criteria for—
- (a) the exclusion and selection of economic operators requesting qualification; and
 - (b) the operation of the qualification system, covering matters such as—
 - (i) inscription in the system;
 - (ii) periodic updating of the qualifications, if any; and
 - (iii) the duration of the system.
- (5) Where the rules and criteria referred to in paragraph (4) include technical specifications, regulations 60 to 62 shall apply.
- (6) The rules and criteria referred to in paragraph (4)—
- (a) shall be made available to economic operators upon request;
 - (b) may be updated as required and if so, shall be communicated to interested economic operators
- (7) Where a utility considers that the qualification system of certain other utilities or other bodies meets its requirements, it shall communicate the names of those utilities and bodies to interested economic operators.
- (8) A written record of qualified economic operators shall be kept and may be divided into categories according to type of contract for which the qualification is valid.
- (9) When a call for competition is made by means of a notice on the existence of a qualification system, specific contracts for the works, supplies or services covered by the qualification system shall be awarded by restricted or negotiated procedure or by a competitive dialogue or innovation partnership, in which all tenderers and participants are selected among the candidates already qualified in accordance with such a system.
- (10) Any charges that are billed in connection with requests for qualification or with updating or conserving an already obtained qualification in accordance with the system shall be proportionate to the generated costs.

Criteria for qualitative selection

- 78.**—(1) Utilities may establish objective rules and criteria for the exclusion and selection of tenderers or candidates.
- (2) Those rules and criteria shall be available to interested economic operators.
- (3) Where utilities need to ensure an appropriate balance between the particular characteristics of the procurement procedure and the resources required to conduct it, they may, in restricted and negotiated procedures, in competitive dialogues or in innovation partnerships, establish objective rules and criteria that reflect that need and enable utilities to reduce the number of candidates that will be invited to tender or to negotiate.
- (4) Utilities shall take account of the need to ensure adequate competition when selecting the number of candidates.

Reliance on the capacities of other entities

- 79.**—(1) Where the objective rules and criteria for the exclusion and selection of—
- (a) economic operators requesting qualification in a qualification system; or
 - (b) candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships,
- include requirements relating to the economic and financial capacity of the economic operator, or its technical and professional abilities, the economic operator may, where necessary, rely on

the capacities of other entities, regardless of the legal nature of the links which it has with them, subject to the following provisions of this regulation.

(2) With regard to criteria relating to the educational and professional qualifications of the service provider or contractor or those of the undertaking's managerial staff or to relevant professional experience, economic operators may however only rely on the capacities of other entities where the latter will perform the works or services for which these capacities are required.

(3) Where an economic operator wants to rely on the capacities of other entities, it shall prove to the utility that the necessary resources will be available to it, for example by producing a commitment by those entities to that effect.

(4) For the purposes of paragraph (3), an economic operator requesting qualification in a qualification system shall prove that the necessary resources will be available to it throughout the period of validity of the qualification system.

(5) Where, in accordance with regulation 80, utilities have referred to exclusion or selection criteria provided for under the Public Contracts Regulations, utilities shall verify, in accordance with regulation 80(4), whether the other entities on whose capacity the economic operator intends to rely fulfil the relevant selection criteria or whether there are grounds for exclusion, to which the utilities have referred, under regulation 57 of the Public Contracts Regulations and,

- (a) the utility shall require that the economic operator replaces an entity in respect of which there are compulsory grounds for exclusion to which the utility has referred; and
- (b) the utility may require that the economic operator replaces an entity in respect of which there are non-compulsory grounds for exclusion to which the utility has referred.

(6) Where an economic operator relies on the capacities of other entities with regard to criteria relating to economic and financial standing, the utility may require that the economic operator and those entities be jointly liable for the execution of the contract.

(7) A group of economic operators within the meaning of regulation 37(3) may rely on the capacities of participants in the group or of other entities, and paragraphs (1) to (6) apply in relation to such a group in the same way that they apply in relation to an economic operator.

(8) In the case of works contracts, service contracts and siting or installation operations in the context of a supply contract, utilities may require that certain critical tasks be performed directly by the tenderer itself or, where the tender is submitted by a group of economic operators within the meaning of regulation 37(3), by a participant in that group.

Use of exclusion grounds and selection criteria provided for under the Public Contracts Regulations

80.—(1) The objective rules and criteria for the exclusion and selection of—

- (a) economic operators requesting qualification in a qualification system; and
- (b) candidates and tenderers in open, restricted or negotiated procedures, in competitive dialogues or in innovation partnerships,

may include the exclusion grounds listed in regulation 57 of the Public Contracts Regulations on the terms and conditions set out in those Regulations.

(2) Where the utility is a contracting authority, the criteria and rules referred to in paragraph (1) shall include the exclusion grounds listed in regulation 57(1) to (5) of the Public Contracts Regulations on the terms and conditions set out in that regulation.

(3) The criteria and rules referred to in paragraph (1) may include the selection criteria set out in regulation 58 of the Public Contracts Regulations on the terms and conditions set out in that regulation, notably as regards the limits to requirements concerning yearly turnovers, as provided for under regulation 58(9) of those Regulations.

- (4) For the purposes of applying paragraphs (1), (2) and (3)—
- (a) regulations 59 to 61 of the Public Contracts Regulations apply.
 - (b) regulations 57 to 61 and 65 of the Public Contracts Regulations shall have effect as though a reference to a contracting authority in those regulations were a reference to a utility;
 - (c) references to regulations 56(2), 24 and 41 in regulation 57(8) of the Public Contracts Regulations shall have effect as though such references are to, respectively, regulations 76(6), 42 and 59 in these Regulations;
 - (d) references to regulations 62 and 63 in regulations 59 and 60 of the Public Contracts Regulations shall have effect as though such references are to, respectively, regulations 81 and 79 in these Regulations;
 - (e) in regulation 59(9) of the Public Contracts Regulations, the words “where such contracts are concluded in accordance with regulations 33(7) or 8(a)” shall be replaced with “ with a single economic operator or where such contracts are concluded without reopening competition in accordance with regulations 51 of the Utilities Contracts Regulations 2016.”;
 - (f) in regulation 58(9) of the Public Contracts Regulations, the words “in the report referred to in regulation 84(1).” shall be replaced with “ in the information and documentation referred to in regulation 99 of the Utilities Contracts Regulations 2016. ”.

Quality assurance standards and environmental management standards

81.—(1) Utilities shall, where they require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain quality assurance standards, including on accessibility for disabled persons, refer to quality assurance systems based on the relevant European standards series certified by accredited bodies.

^{F4}(2)

(3) Utilities shall also accept other evidence of equivalent quality assurance measures where the economic operator concerned had no possibility of obtaining such certificates within the relevant time limits for reasons that are not attributable to that economic operator, provided that the economic operator proves that the proposed quality assurance measures comply with the required quality assurance standards.

(4) Where utilities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain environmental management systems or standards, they shall refer to—

^{F5}(a)

^{F5}(b)

(c) ^{F6}...environmental management standards based on the relevant European or international standards by accredited bodies,

^{F7} ...

(5) Where an economic operator had demonstrably no access to the certificates referred to in paragraph (4), or no possibility of obtaining them within the relevant time limits for reasons that are not attributable to that economic operator, the utility shall accept other evidence of environmental management measures, provided that the economic operator proves that these measures are equivalent to those required under the applicable environmental management system or standard.

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Textual Amendments

- F4** Reg. 81(2) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(46)(a)** (with Sch. paras. 3-5)
- F5** Reg. 81(4)(a)(b) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(46)(b)(i)** (with Sch. paras. 3-5)
- F6** Word in reg. 81(4)(c) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(46)(b)(ii)** (with Sch. paras. 3-5)
- F7** Words in reg. 81(4) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(46)(b)(iii)** (with Sch. paras. 3-5)

SUB-SECTION 2 *Award of the Contract*

Contract award criteria

82.—(1) Utilities shall base the award of contracts on the most economically advantageous tender assessed from the point of view of the utility.

(2) That tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach, such as life-cycle costing in accordance with regulation 83, and may include the best price-quality ratio, which shall be assessed on the basis of criteria linked to the subject-matter of the contract in question, such as any one or more of the following—

- (a) qualitative aspects,
- (b) environmental aspects, and
- (c) social aspects.

(3) Such criteria may comprise, for example:—

- (a) quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
- (b) organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
- (c) after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion, commitments with regard to parts and security of supply.

(4) The cost element may also take the form of a fixed price or cost on the basis of which economic operators will compete on quality criteria only.

(5) Award criteria shall be considered to be linked to the subject-matter of the contract where they relate to the works, supplies or services to be provided under that contract in any respect and at any stage of their life-cycle, including factors involved in—

- (a) the specific process of production, provision or trading of those works, supplies or services; or
- (b) a specific process for another stage of their life-cycle,

even where such factors do not form part of their material substance.

(6) Award criteria shall not have the effect of conferring an unrestricted freedom of choice on the utility.

(7) Award criteria shall—

- (a) ensure the possibility of effective competition; and

- (b) be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria.

(8) In case of doubt, utilities shall verify effectively the accuracy of the information and proof provided by the tenderers.

Weighting

(9) The utility shall specify in the procurement documents, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous tender, except where this is identified on the basis of price alone.

(10) Those weightings may be expressed by providing for a range with an appropriate maximum spread.

(11) Where weighting is not possible for objective reasons, the utility shall indicate the criteria in descending order of importance.

Life-cycle costing

83.—(1) Life-cycle costing shall, to the extent relevant, cover part or all of the following costs over the life cycle of a product, service or works—

- (a) costs, borne by the utility or other users, such as—
 - (i) costs relating to acquisition;
 - (ii) costs of use, such as consumption of energy and other resources;
 - (iii) maintenance costs;
 - (iv) end of life costs, such as collection and recycling costs;
- (b) costs imputed to environmental externalities linked to the product, service or works during its life cycle, provided their monetary value can be determined and verified.

(2) The costs mentioned in paragraph (1)(b) may include the cost of emissions of greenhouse gases and of other pollutant emissions and other climate change mitigation costs.

(3) The method used for the assessment of costs imputed to environmental externalities shall fulfil all of the following conditions—

- (a) it is based on objectively verifiable and non-discriminatory criteria and, in particular, where it has not been established for repeated or continuous application, it shall not unduly favour or disadvantage certain economic operators;
- (b) it is accessible to all interested parties;
- (c) the data required can be provided with reasonable effort by normally diligent economic operators^{F8}...

(4) Where utilities assess the costs using a life-cycle costing approach, they shall indicate in the procurement documents—

- (a) the data to be provided by the tenderers; and
- (b) the method which the utility will use to determine the life-cycle costs on the basis of those data.

^{F9}(5)

^{F9}(6)

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Textual Amendments

- F8** Words in reg. 83(3)(c) omitted (1.1.2022) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(4), **11(3)** (with Sch. paras. 3-5, 10-15)
- F9** Reg. 83(5)(6) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(47)(b)** (with Sch. paras. 3-5)

Abnormally low tenders

84.—(1) Utilities shall require economic operators to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services.

(2) The explanations given in accordance with paragraph (1) may in particular relate to—

- (a) the economics of the manufacturing process, of the services provided or of the construction method;
- (b) the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;
- (c) the originality of the work, supplies or services proposed by the tenderer;
- (d) compliance with the applicable obligations referred to in regulation 76(6);
- (e) compliance with obligations referred to in regulation 87;

^{F10}(f)

[^{F11}(g) whether the price or costs take into account the grant of subsidies.]

(3) The utility shall assess the information provided by consulting the tenderer.

(4) The utility may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to in paragraph (2).

(5) The utility shall reject the tender where it has established that the tender is abnormally low because it does not comply with applicable obligations referred to in regulation 76(6).

^{F12}(6)

^{F12}(7)

Textual Amendments

- F10** Reg. 84(2)(f) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(48)(a)** (with Sch. paras. 3-5)
- F11** Reg. 84(2)(g) inserted (27.6.2022) by [The Public Procurement \(International Trade Agreements\) \(Amendment\) Regulations 2022 \(S.I. 2022/766\)](#), regs. 1(1), **4(2)** (with reg. 9)
- F12** Reg. 84(6)(7) omitted (31.12.2020) by virtue of [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(48)(b)** (with Sch. paras. 3-5)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 54 Sch. 11 para. 7](#)

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](#)