
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 3

Conduct of the procedure

SECTION 2

Publication and transparency

Periodic indicative notices

67.—(1) Utilities may make known their intentions of planned procurements through the publication of a periodic indicative notice.

(2) Such notices shall contain the information set out in part A, section I of Annex VI to the Utilities Contracts Directive.

(3) A utility wishing to publish a periodic indicative notice shall—

- (a) send it for publication in accordance with regulation 71; or
- (b) publish it on the utility's buyer profile in accordance with regulation 72.

(4) Where the periodic indicative notice is published by the utility on its buyer profile the utility shall send for publication, in accordance with regulation 71, a notice containing the information set out in Part B of Annex VI to the Utilities Contracts Directive.

(5) When a call for competition is made by means of a periodic indicative notice in respect of restricted procedures and negotiated procedures with prior call for competition and competitive dialogue, the notice shall meet all the following requirements—

- (a) it refers specifically to the supplies, works or services that will be the subject of the contract to be awarded;
- (b) it indicates that the contract will be awarded by restricted or negotiated procedure or competitive dialogue without further publication of a call for competition and invites interested economic operators to express their interest;
- (c) it contains, in addition to the information set out in section I of Part A of Annex VI to the Utilities Contracts Directive, the information set out section II of Part A;
- (d) it has been sent for publication between 35 days and 12 months prior to the date on which the invitation to confirm interest is sent for the purposes of regulation 74(1) or (2).

(6) Where paragraph (5) applies, paragraph (3)(b) shall not apply to the notice, but additional publication at national level under regulation 52, if any, may be made on a buyer profile.

(7) The period covered by the periodic indicative notice shall be a maximum of 12 months from the date on which the notice is transmitted for publication.

(8) In the case of contracts for social and other specific services, the periodic indicative notice referred to in regulation 91(1)(b) may cover a period which is longer than 12 months.

Notices on the existence of a qualification system

68.—(1) Where utilities choose to set up a qualification system in accordance with regulation 77, the system shall be the subject of a notice which shall include the information set out in Annex X to the Utilities Contracts Directive, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.

(2) Utilities shall indicate the period of validity of the qualification system in the notice on the existence of the system.

(3) Utilities shall notify the EU Publications Office of any change in the period of validity, using the following standard forms—

- (a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems;
- (b) where the system is terminated, a contract award notice referred to in regulation 70.

Contract notices

69. Contract notices shall contain the information set out in the relevant part of Annex XI to the Utilities Contracts Directive and shall be sent for publication in accordance with regulation 71.

Contract award notices

70.—(1) Not later than 30 days after the award of a contract or the conclusion of a framework agreement, following the decision to award or conclude it, utilities shall send for publication a contract award notice on the results of the procurement procedure.

(2) Such notices shall contain the information set out in Annex XII to the Utilities Contracts Directive and shall be sent for publication in accordance with regulation 71.

(3) Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the utility has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice shall contain a specific indication to that effect.

(4) In the case of framework agreements, utilities shall not be bound to send a notice of the results of the procurement procedure for each contract based on such an agreement.

(5) In the case of dynamic purchasing systems, utilities shall either—

- (a) send a contract award notice within 30 days after the award of each contract based on a dynamic purchasing system; or
- (b) group such notices on a quarterly basis, in which case they shall send the grouped notices within 30 days of the end of each quarter.

(6) Certain information on the contract award or the conclusion of the framework agreement may be withheld from publication where its release—

- (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.

(7) In the case of contracts for research and development services, the information concerning the nature and quantity of the services may be limited to:—

- (a) the indication “R & D services” where the contract has been awarded by a negotiated procedure without a call for competition in accordance regulation 50(1)(b);
- (b) information as least as detailed as was indicated in the notice that was used as a means of calling for competition.

Form and manner of sending notices for publication at EU level

71.—(1) The notices required by regulations 67 to 70, 88, 91 and 95 to be sent for publication in accordance with this regulation shall be sent by electronic means to the EU Publications Office for publication.

(2) Utilities shall ensure that they are able to supply proof of the dates on which notices are sent to the EU Publications Office for publication.

(3) Where the EU Publications Office has given the utility confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication, that confirmation shall constitute proof of publication.

(4) Utilities may send notices in respect of works, supply or service contracts to the EU Publications Office for publication even where they are not required by these Regulations to do so, provided that the notices are sent by electronic means.

(5) The notices referred to in paragraphs (1) and (4), shall be in the format of the relevant standard forms set out in Commission Implementing Regulation (EU) 2015/1986(1) as amended from time to time.

Publication at national level

Publication on buyer profiles

Publication on buyer profiles

72.—(1) In addition to the publication of the notices referred to in regulations 67 to 70, 91 and 95 by the EU Publications Office, utilities may publish the information contained in them on the internet on a buyer profile.

(2) A buyer profile may also include (in addition to the periodic indicative notices referred to in regulation 67(3)(b))—

- (a) information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled; and
- (b) any useful general information, such as a contact point, a telephone and a facsimile number, a postal address and an e-mail address.

Timing and content of publication at national level

(3) The notices referred to in regulations 67 to 70, 91 and 95, and the information contained in them shall not be published at national level before they are published by the EU Publications Office.

(4) But publication may in any event take place at the national level where utilities have not been notified of the publication by the EU Publications Office within 48 hours after confirmation of the receipt of the notice in accordance with Article 71(5) of the Utilities Contracts Directive.

(1) OJ No L 296, 12.11.2015, p1.

(5) Notices published at national level shall not contain information other than that contained in the notices sent to the EU Publications Office or published on a buyer profile, but shall indicate the date of sending of the notice to the EU Publications Office or its publication on the buyer profile.

(6) Where a periodic indicative notice is to be published on a buyer profile for the purposes of regulation 67(3)(b)—

- (a) the periodic indicative notice may not be so published before the notice referred to in regulation 67(4) is sent to the EU Publications Office; and
- (b) the periodic indicative notice shall indicate the date of that sending.

Electronic availability of procurement documents

73.—(1) Utilities shall, by means of the internet, offer unrestricted and full direct access free of charge to the procurement documents from the date of publication in the Official Journal of a notice in accordance with regulation 71 or the date on which an invitation to confirm interest is sent.

(2) But where the means of calling for competition is a notice on the existence of a qualification system, the access referred to in paragraph (1) shall be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent.

(3) The text of the notice or of the invitation shall specify the internet address at which the procurement documents are accessible.

(4) Where unrestricted and full direct access free of charge to certain procurement documents cannot be offered by means of the internet for one of the reasons set out in regulation 40(3), utilities may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by means other than the internet in accordance with paragraphs (7) and (8).

(5) Where unrestricted and full direct access free of charge to certain procurement documents cannot be offered by means of the internet because utilities intend to apply regulation 39(3), utilities shall indicate in—

- (a) the notice;
- (b) the invitation to confirm interest; or
- (c) where the means of calling for competition is a notice on the existence of a qualification system, the procurement documents,

which measures aimed at protecting the confidential nature of the information they require and how access can be obtained to the documents concerned.

(6) In the cases referred to in paragraphs (4) and (5), the time limit for the submission of tenders shall be prolonged by 5 days, except—

- (a) in the cases of duly substantiated urgency referred to in regulation 45(5), and
- (b) where the time limit is set by mutual agreements in accordance with regulations 46(5) or 47(5).

(7) Provided that it has been requested in good time, utilities shall supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents no later than 6 days before the time limit fixed for the receipt of tenders.

(8) In the case of an accelerated open procedure, the period mentioned in paragraph (7) shall be 4 days.

Invitations to candidates

74.—(1) In restricted procedures, competitive dialogue procedures, innovation partnerships and negotiated procedures with prior call for competition, utilities shall simultaneously and in writing invite the selected candidates to submit their tenders, to take part in the dialogue or to negotiate.

(2) Where a periodic indicative notice is used as a call for competition in accordance with regulation 44(4)(a), utilities shall simultaneously and in writing invite the economic operators which have expressed their interest to confirm their continuing interest.

(3) The invitations required by paragraphs (1) and (2) shall—

- (a) include a reference to the electronic address at which the procurement documents have been made directly available by electronic means, and
- (b) be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons referred to in regulation 73(4) or (5) and have not been made otherwise available.

(4) The invitations required by paragraph (1) shall also contain at least the following information—

- (a) the final date for receipt of tenders, the address to which they are to be sent and the language or languages in which they are to be drawn up;
- (b) in the case of competitive dialogue, the date and the address set for the start of consultation and the language or languages to be used;
- (c) a reference to any published call for competition;
- (d) an indication of any documents to be attached;
- (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
- (f) the relative weighting of the contract award criteria or, where appropriate, the order of importance of such criteria, if this information is not given in the contract notice, the notice on the existence of a qualification system or the specifications.

(5) But in the case of contracts awarded through a competitive dialogue or an innovation partnership, the information referred to in paragraph (4)(a) shall not appear in the invitation to negotiate but it shall appear in the invitation to submit a tender.

(6) The invitations required by paragraph (2) shall also contain at least the following information—

- (a) nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising those options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) type of procedure, namely restricted procedure or negotiated procedure or competitive dialogue;
- (c) where applicable, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- (e) the address of the utility;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;

- (g) the form of the contract which is the subject of the invitation to tender, namely, purchase, lease, hire or hire-purchase, or any combination of those; and
- (h) the contract award criteria and their weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the indicative notice or the specifications or in the invitation to tender or to negotiate.

Informing applicants for qualification, candidates and tenderers

75.—(1) Utilities shall as soon as possible inform each candidate and tenderer of decisions reached concerning the conclusion of a framework agreement, the award of a contract, or admittance to a dynamic purchasing system, including 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.

(2) On request from the candidate or tenderer concerned, a utility shall, 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 60(14) and (15), the reasons for its decision of non-equivalence or their 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;
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(3) Utilities may decide to withhold certain information referred to in paragraphs (1) and (2) 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, public or private; or
- (c) might prejudice fair competition between economic operators.

Qualification systems

(4) Utilities which establish and operate a system of qualification shall inform applicants of their decision as to qualification within a period of 6 months.

(5) If the decision will take longer than 4 months from the presentation of an application, the utility shall inform the applicant, within 2 months of the application, of the reasons justifying the longer period and of the date by which his application will be accepted or refused.

(6) Applicants whose qualification is refused shall be informed of the refusal decision and the reasons for that decision as soon as possible and no more than 15 days later than the date of the refusal decision.

(7) The reasons shall be based on the criteria for qualification referred to in regulation 77(4).

(8) Utilities which establish and operate a system of qualification may bring the qualification of an economic operator to an end only for reasons based on the criteria for qualification referred to in regulation 77(3) to (6).

(9) Any intention to bring the qualification to an end shall 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 reason or reasons justifying the proposed action.