
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 3

PARTICULAR PROCUREMENT REGIMES

CHAPTER 1

Social and other specific services

Award of contracts for social and other specific services

90. Contracts for social and other specific services listed in Schedule 2 shall be awarded in accordance with this Chapter.

Publication of notices

91.—(1) Utilities intending to award a contract for the services referred to in regulation 90 shall make known their intention by any of the following means—

(a) a contract notice; [^{F1}or]

^{F2}(b)

(c) a notice on the existence of a qualification system, which shall 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 50, for the award of a service contract.

(3) Utilities that have awarded a contract for the services referred to in regulation 90 shall make known the results by mean of a contract award notice.

(4) Utilities may, however, group contract award notices on a quarterly basis, in which case they shall [^{F3}submit] the grouped notices within 30 days of the end of each quarter.

(5) The notices referred to in paragraphs (1), (3) and (4) shall contain the information referred to in the relevant part of Annex XVIII to the Utilities Contracts Directive [^{F4}, 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 Regulations 2016)].

(6) Utilities shall [^{F5}submit] the notices referred to in this regulation for publication in accordance with regulation 71.

Textual Amendments

- F1** Word in reg. 91(1) inserted (E. N.I.) (25.5.2023) by [The Public Procurement \(International Trade Agreements\) \(Amendment\) Regulations 2023 \(S.I. 2023/484\)](#), regs. 1(2), **4(20)(a)** (with regs. 1(4)(b), 5); and inserted (W.) (26.5.2023) by [The Public Procurement \(International Trade Agreements\) \(Amendment\) \(Wales\) \(No. 2\) Regulations 2023 \(S.I. 2023/567\)](#), regs. 1(2), **4(20)(a)** (with reg. 5)

Changes to legislation: *The Utilities Contracts Regulations 2016, CHAPTER 1 is up to date with all changes known to be in force on or before 09 April 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*

- F2** Reg. 91(1)(b) omitted (E. N.I.) (25.5.2023) by virtue of [The Public Procurement \(International Trade Agreements\) \(Amendment\) Regulations 2023 \(S.I. 2023/484\)](#), regs. 1(2), **4(20)(b)** (with regs. 1(4)(b), 5); and omitted (W.) (26.5.2023) by virtue of [The Public Procurement \(International Trade Agreements\) \(Amendment\) \(Wales\) \(No. 2\) Regulations 2023 \(S.I. 2023/567\)](#), regs. 1(2), **4(20)(b)** (with reg. 5)
- F3** Word in reg. 91(4) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(53)(a)** (with Sch. paras. 3-5)
- F4** Words in reg. 91(5) inserted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(53)(b)** (with Sch. paras. 3-5)
- F5** Word in reg. 91(6) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(53)(c)** (with Sch. paras. 3-5)

Principles of awarding contracts

92.—(1) Utilities shall determine the procedures that are to be applied in connection with the award of contracts subject to this Chapter, and may take into account the specificities of the services in question.

(2) Those procedures shall be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) In particular, where, in accordance with regulation 91, a contract notice^{F6}... or notice on the existence of a qualification system has been published in relation to a given procurement, the utility shall, except in the circumstances mentioned in paragraph (4), conduct the procurement, and award any resulting contract, 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.

(4) The utility may, however, conduct the procurement, and award any resulting contract, in a way which is not in conformity with that information, but only if all 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, before proceeding in reliance on sub-paragraph (a)—
 - (i) given due consideration to the matter,
 - (ii) concluded that sub-paragraph (a) is applicable,
 - (iii) documented that conclusion and the reasons for it in accordance with regulation 99(4) and (5); and
 - (iv) informed the participants of the respects in which the utility intends to proceed in a way which is not in conformity with the information contained in the notice.

(5) In paragraph (4)(b)(iv), “participants” means any economic operators which have responded to the notice and have not been informed by the utility that they are no longer under consideration for qualification or the award of a contract within the scope of the procurement concerned.

(6) All time limits imposed on economic operators for the purposes of this regulation, whether for responding to a contract notice or a notice on the existence of a qualification system or taking any other steps in the relevant procedure, shall be reasonable and proportionate.

(7) Without prejudice to the generality of paragraph (1) and subject to the other requirements of this Part, utilities may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features provided for in Part 2, as well as procedures which do not.

(8) In relation to the award of contracts subject to this Chapter, utilities may take into account any relevant considerations, including—

- (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; and
- (d) innovation;

Textual Amendments

F6 Words in reg. 92(3) omitted (E. N.I.) (25.5.2023) by virtue of [The Public Procurement \(International Trade Agreements\) \(Amendment\) Regulations 2023 \(S.I. 2023/484\)](#), regs. 1(2), **4(21)** (with regs. 1(4)(b), 5); and omitted (W.) (26.5.2023) by virtue of [The Public Procurement \(International Trade Agreements\) \(Amendment\) \(Wales\) \(No. 2\) Regulations 2023 \(S.I. 2023/567\)](#), regs. 1(2), **4(21)** (with reg. 5)

Reserved contracts for certain services

93.—(1) Utilities that are contracting authorities may reserve to qualifying organisations the right to participate in procedures for the award of reservable public contracts.

(2) For that purpose, a contract is a reservable public contract only if it is exclusively for one or more of those health, social and cultural services which are covered by CPV codes 75121000-0, 75122000-7, 75123000-4, 79622000-0, 79624000-4, 79625000-1, 80110000-8, 80300000-7, 80420000-4, 80430000-7, 80511000-9, 80520000-5, 80590000-6, from 85000000-9 to 85323000-9, 92500000-6, 92600000-7, 98133000-4 and 98133110-8.

(3) In this regulation, “qualifying organisation” means an organisation which fulfils all of the following conditions—

- (a) its objective is the pursuit of a public service mission linked to the delivery of services referred to in paragraph (2);
- (b) profits are reinvested with a view to achieving the organisation's objective, and any distribution of profits is based on participatory considerations;
- (c) the structures of management or ownership of the organisation are (or will be, if and when it performs the contract)—
 - (i) based on employee ownership or participatory principles; or
 - (ii) require the active participation of employees, users or stakeholders; and
- (d) the organisation has not been awarded, pursuant to this regulation, a contract for the services concerned by the contracting authority concerned within the past 3 years.

(4) The maximum duration of the contract awarded under this regulation shall not be longer than 3 years.

(5) Where a contracting authority exercises the power of reservation conferred by paragraph (1), the call for competition shall make reference to [^{F7}this regulation].

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Textual Amendments

- F7** Words in [reg. 93\(5\)](#) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **10(54)** (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. 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))