
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;
- (b) a periodic indicative notice, which shall—
 - (i) be published continuously;
 - (ii) refer specifically to the types of services that will be the subject-matter of the contracts to be awarded; and
 - (iii) indicate that the contracts will be awarded without further publication and invite interested economic operators to express their interest in writing; or
- (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 means of a contract award notice.

(4) Utilities may, however, group contract award notices on a quarterly basis, in which case they shall send 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.

(6) Utilities shall send the notices referred to in this regulation for publication in accordance with regulation 71.

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, periodic indicative notice 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;

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 Article 94 of the Utilities Contracts Directive.

CHAPTER 2

Rules governing design contests

Scope of Chapter 2

94. This Chapter applies to—

- (a) design contests organised as part of a procurement procedure for a service contract, provided that the estimated value of the contract (net of VAT) and including any possible prizes or payments to participants is equal to or greater than the threshold mentioned in regulation 16(1)(a);
- (b) design contests where the total amount of contest prizes and payments to participants including the value (net of VAT) of the service contract, which might subsequently be concluded following a negotiated procedure without prior call for competition in accordance with regulation 50(1)(j) if the utility does not exclude such an award in the contest notice, is equal to or greater than the threshold mentioned in regulation 16(1)(a).

Notices

95.—(1) Utilities that intend to organise a design contest shall call for competition by means of a contest notice.

(2) Contest notices shall—

- (a) include the information set out in Annex XIX to the Utilities Contracts Directive; and
- (b) be sent for publication in accordance with regulation 71.

(3) Utilities that have held a design contest shall make the results known by means of a notice, which shall be sent for publication—

- (a) in accordance with regulation 71, and
- (b) within 30 days of the closure of the design contest.

(4) A notice of the results of the contest shall include the information set out in Annex XX to the Utilities Contracts Directive.

(5) But where the release of the information on the outcome of the contest—

- (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,

such information may be withheld from publication.

Rules on the organisation of design contests and the selection of participants and the jury

96.—(1) When organising design contests, utilities shall apply procedures which are adapted to the provisions of Part I and this Chapter.

(2) The admission of participants to design contests shall not be limited—

- (a) by reference to the territory or part of the territory of a member State;
- (b) on the grounds that under the law of the member State in which the contest is organised they would be required to be either natural or legal persons.

(3) Where design contests are restricted to a limited number of participants, utilities shall establish clear and non-discriminatory selection criteria.

(4) In any event, the number of candidates invited to participate shall be sufficient to ensure genuine competition.

(5) The jury shall be composed exclusively of natural persons who are independent of participants in the contest.

(6) Where a particular professional qualification is required of participants in a contest, at least a third of the members of the jury shall have that qualification or an equivalent qualification.

Decisions of the jury

97.—(1) The jury shall be autonomous in its decisions and opinions.

(2) The jury shall examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury shall record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(4) Anonymity shall be observed until the jury has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspects of the projects.

(6) Complete minutes shall be drawn up of the dialogue between jury members and candidates.