
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 1

Procedures

Competitive dialogue

General and selection of participants

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48.—(1) In competitive dialogues, any economic operator may submit a request to participate in response to a call for competition in accordance with regulation 44(4) by providing the information for qualitative selection that is requested by the utility.

(2) The minimum time limit for receipt of requests to participate shall, in general, be fixed at no less than 30 days—

- (a) from the date on which the contract notice is sent; or
- (b) where a periodic indicative notice is used as a means of calling for competition, the date on which the invitation to confirm interest is sent,

and shall in any event not be less than 15 days.

(3) Only those economic operators invited by the utility following the assessment of the information provided may participate in the dialogue.

(4) Utilities may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 78(3) and (4).

(5) The contract shall be awarded on the sole basis of the award criterion of the tender presenting the best price-quality ratio in accordance with regulation 82(1) to (4).

(6) Utilities shall set out and define their needs and requirements in the call for competition, in a descriptive document or in both.

(7) At the same time and in the same documents, utilities shall also set out and define the chosen award criteria and set out an indicative timeframe.

Conduct of the dialogue

(8) Utilities—

- (a) shall open, with the participants selected in accordance with the relevant provisions of regulations 76 to 81, a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs, and

(b) may discuss all aspects of the procurement with the chosen participants during this dialogue.

(9) During the dialogue, utilities shall ensure equality of treatment among all participants and, to that end, they shall not provide information in a discriminatory manner which may give some participants an advantage over others.

(10) In accordance with regulation 39, utilities shall not reveal to the other participants solutions proposed or other confidential information communicated by a participating candidate or tenderer in the dialogue without its agreement.

(11) Such agreement shall not take the form of a general waiver but shall be given with reference to the intended communication of specific information.

(12) Competitive dialogues may take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria laid down in the call for competition or in the descriptive document.

(13) In the call for competition or the descriptive document, the utility shall indicate whether it will use the option described in paragraph (12).

(14) The utility shall continue the dialogue until it can identify the solution or solutions which are capable of meeting its needs.

Final tenders

(15) Having declared that the dialogue is concluded and having so informed the remaining participants, utilities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue.

(16) Those tenders shall contain all the elements required and necessary for the performance of the project.

(17) Those tenders may be clarified, specified and optimised at the request of the utility.

(18) But such clarification, specification or optimisation or any additional information, may not involve changes to the essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where variations to those aspects, needs and requirements are likely to distort competition or have a discriminatory effect.

(19) Utilities shall assess the tenders received on the basis of the award criteria laid down in the call for competition or in the descriptive document.

(20) At the request of the utility, negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 82(1) to (4) may be carried out to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, provided such negotiations—

- (a) do not have the effect of materially modifying essential aspects of the tender or of the procurement, including the needs and requirements set out in the call for competition or in the descriptive document; and
- (b) do not risk distorting competition or causing discrimination.

Prizes and payments

(21) Utilities may specify prizes or payments to the participants in the dialogue.