
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;

(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 EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex XIV to the Utilities Contracts Directive as amended from time to time.

(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.