
STATUTORY INSTRUMENTS

2023 No. 484

The Public Procurement (International Trade Agreements) (Amendment) Regulations 2023

Amendment to the Utilities Contracts Regulations 2016

- 4.—(1) The Utilities Contracts Regulations 2016 are amended as follows.
- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “invitation to confirm interest”;
 - (b) in the definition of “periodic indicative notice”, omit “, or where relevant, 91(1)(b)”;
 - (c) in the definition of “procurement document”, omit “, the periodic indicative notice”.
- (3) In regulation 17 (methods for calculating the estimated value of the procurement)—
- (a) in paragraph (14), for “paragraph (15)” substitute “paragraphs (15) and (15A)”;
 - (b) after paragraph (15), insert—

“(15A) Where a utility that is not a devolved Welsh authority is unable to estimate in accordance with this regulation the value of one or more lots into which a proposed work, proposed acquisition of similar supplies or proposed provision of services has been divided, the aggregate value of the lots awarded in reliance on paragraph (14) shall not exceed 20 per cent of the aggregate value of all the lots that can be so estimated.”;
 - (c) after paragraph (19), insert—

“(20) If a utility that is not a devolved Welsh authority is unable to estimate the value of a procurement in accordance with this regulation, the estimated value of the procurement inclusive of VAT is deemed to be equal to the relevant threshold amount in regulation 16 (threshold amounts).”.
- (4) In regulation 36 (principles of procurement), after paragraph (3), insert—

“(4) Utilities that are not devolved Welsh authorities shall not terminate contracts in a manner that circumvents their obligations under these Regulations.”.
- (5) In regulation 40 (rules applicable to communication)—
- (a) in paragraph (14), in sub-paragraph (a), omit “or from the date on which the invitation to confirm interest is sent”;
 - (b) in paragraph (15), in sub-paragraph (b), omit “or the invitation to confirm interest”.
- (6) In regulation 44 (choice of procedures)—
- (i) in paragraph (4), omit sub-paragraph (a);
 - (ii) omit paragraph (5).
- (7) In regulation 45 (open procedure)—
- (a) in paragraph (2), for “paragraphs (4) to (6)” substitute “paragraphs (4A) to (6)”;
 - (b) omit paragraph (4);
 - (c) before paragraph (5) insert—

“(4A) Where utilities that are not devolved Welsh authorities have published a periodic indicative notice, the minimum time limit for receipt of tenders, as laid down in paragraph (2), may be shortened to 15 days, provided that all of the following conditions are fulfilled—

- (a) the periodic indicative notice included all the information required by regulation 67(2);
- (b) the periodic indicative notice included, insofar as it was available at the time the notice was published, the information set out in section 2 of Part A of Annex 6 to the Utilities Contracts Directive, but as if—
 - (i) in paragraph 7, “the third and fourth subparagraph of Article 73(1)” were a reference to regulation 73(4) and (5) of these Regulations; and
 - (ii) in paragraph 21—
 - (aa) “Article 82” were a reference to regulation 82 of these Regulations; and
 - (bb) the words “in the invitation to confirm interest referred to in point (b) of Article 67(2) or” were omitted; and
- (c) the periodic indicative notice was submitted for publication between 35 days and 12 months before the date on which the contract notice was submitted.”.

(8) In regulation 46 (restricted procedure), in paragraph (2), omit sub-paragraph (b) and the preceding “; or”.

(9) In regulation 47 (negotiated procedure with prior call for competition), in paragraph (2), omit sub-paragraph (b) and the preceding “; or”.

(10) In regulation 48 (competitive dialogue), in paragraph (2), omit sub-paragraph (b) and the preceding “; or”.

(11) In regulation 52 (dynamic purchasing systems)—

- (a) in paragraph (9), omit sub-paragraph (b) and the preceding “; or”;
- (b) in paragraph (23)—
 - (i) after sub-paragraph (a), insert “or”;
 - (ii) omit sub-paragraph (b).

(12) In regulation 53 (electronic auctions), in paragraph (7), omit “, in the invitation to confirm interest”.

(13) In regulation 54 (electronic catalogues), in paragraph (5)(a), omit “in the invitation to confirm interest”.

(14) In regulation 63 (communication of technical specifications), in paragraph (1), omit sub-paragraph (b) and the preceding “; or”.

(15) In regulation 65 (division of contract into lots)—

- (a) in paragraph (2)—
 - (i) after sub-paragraph (a), insert “or”;
 - (ii) omit sub-paragraph (b);
- (b) in both paragraphs (3)(b) and (5)(b), omit “to confirm interest”.

(16) In regulation 67 (periodic indicative notices), omit paragraphs (5), (6) and (8).

(17) In regulation 70 (contract award notices), omit paragraph (3).

(18) In regulation 73 (electronic availability of procurement documents)—

- (a) in paragraph (1), omit “or the date on which an invitation to confirm interest is sent”;
 - (b) in paragraph (4), omit “or the invitation to confirm interest”;
 - (c) in paragraph (5)—
 - (i) after sub-paragraph (a), insert “or”;
 - (ii) omit sub-paragraph (b).
- (19) In regulation 74 (invitations to candidates)—
- (a) omit paragraph (2);
 - (b) in paragraph (3), for “paragraphs (1) and (2)” substitute “paragraph (1)”;
 - (c) omit paragraph (6).
- (20) In regulation 91 (publication of notices), in paragraph (1)—
- (a) after sub-paragraph (a) insert “or”;
 - (b) omit sub-paragraph (b).
- (21) In regulation 92 (principles of awarding contracts), in paragraph (3), omit “, periodic indicative notice”.
- (22) In regulation 105A (duty owed to economic operators from GPA parties), in paragraph (3)—
- (a) after sub-paragraph (a) insert “or”;
 - (b) omit sub-paragraph (b).
- (23) In Schedule 3 (international trade agreements), after the last entry (for Iceland, the Principality of Liechtenstein and the Kingdom of Norway), insert—
- “For utilities that are not devolved Welsh authorities:
- Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, signed at London on 16th December 2021 and Adelaide on 17th December 2021.
 - Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, signed at London on 28th February 2022.”.