
SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 2

RULES APPLICABLE TO CONTRACTS

CHAPTER 3

CONDUCT OF THE PROCEDURE

SECTION 2

Publication and transparency

Periodic indicative notices

65.—(1) A utility may make known its intentions of a planned procurement through the publication of a periodic indicative notice.

(2) A periodic indicative notice must contain the information set out in section I of Part A of Annex VI to the Utilities Contracts Directive.

(3) A utility wishing to publish a periodic indicative notice must—

- (a) send it for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level); or
- (b) publish it on the utility's buyer profile in accordance with regulation 70 (publication at national level).

(4) Where the utility intends to publish the periodic indicative notice on its buyer profile, the utility must send for publication, in accordance with regulation 69 (form and manner of sending notices for publication at EU level), a notice of the publication on its buyer profile.

(5) The notice of publication referred to in paragraph (4) must contain the information set out in Part B of Annex VI to the Utilities Contracts Directive.

(6) Where a utility uses a periodic indicative notice as a call for competition in respect of either a restricted procedure or a negotiated procedure with prior call for competition, the notice must—

- (a) refer specifically to the works, supplies or services that will be the subject of the contract to be awarded;
- (b) indicate that the contract will be awarded by restricted procedure or negotiated procedure without further publication of a call for competition and invite interested economic operators to express their interest;
- (c) contain, in addition to the information set out in section I of Part A of Annex VI to the Utilities Contracts Directive, the information set out in section II of that Part; and
- (d) have been sent for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level) between 35 days and 12 months prior to the

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date on which an invitation to confirm interest is sent for the purposes of regulation 72(3) (invitations to candidates).

(7) In addition to sending a periodic indicative notice used for the purpose mentioned in paragraph (6) for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level), a utility may publish such a notice on its buyer profile in accordance with regulation 70 (publication at national level).

(8) Subject to paragraph (9), the period covered by a periodic indicative notice must be a maximum of 12 months from the date on which the notice is sent for publication.

(9) In the case of a contract for social and other specific services referred to in Schedule 2 (social and other specific services), a periodic indicative notice referred to in regulation 89(1)(b) (publication of notices) may cover a period which is longer than 12 months from the date on which the notice is sent for publication.

Commencement Information

I1 [Reg. 65](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Notices on the existence of a qualification system

66.—(1) This regulation applies where a utility chooses to set up a qualification system in accordance with regulation 75 (qualification systems).

(2) The qualification system must be the subject of a notice which includes the information set out in Annex X to the Utilities Contracts Directive, indicating the purpose of the qualification system and how to have access to the rules concerning its operation.

(3) The utility must—

- (a) indicate the period of validity of the qualification system in the notice on the existence of the system; and
- (b) notify the EU Publications Office of any change in the period of validity.

(4) The notification in paragraph (3)(b) must be made by using the following standard forms—

- (a) where the period of validity is changed without terminating the system, the form for notices on the existence of qualification systems; and
- (b) where the system is terminated, a contract award notice referred to in regulation 68 (contract award notices).

Commencement Information

I2 [Reg. 66](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Contract notices

67. A contract notice must contain the information set out in the relevant part of Annex XI to the Utilities Contracts Directive and must be sent for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level).

Commencement Information

I3 [Reg. 67](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Contract award notices

68.—(1) Not later than 30 days after the award of a contract or conclusion of a framework agreement, a utility must send for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level) a contract award notice on the results of the procurement.

(2) A contract award notice must contain the information set out in Annex XII to the Utilities Contracts Directive.

(3) Where the call for competition for the contract concerned has been made in the form of a periodic indicative notice and the utility has decided that it will not award further contracts during the period covered by the periodic indicative notice, the contract award notice must contain a specific indication to that effect.

(4) In accordance with paragraph (5), a utility must send for publication a contract award notice in respect of the award of a supply, service or works contract based on a framework agreement if the estimated value of the contract under the framework is equal to or greater than the threshold referred to in regulation 15(1) (thresholds) applicable to that type of contract.

(5) The utility must send such notices for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level) on a quarterly basis, within 30 days of the end of each quarter.

(6) In the case of the award of a contract based upon a dynamic purchasing system, a utility must either—

- (a) send for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level) a contract award notice within 30 days after the award of each such contract; or
- (b) group notices referred to in sub-paragraph (a) on a quarterly basis, in which case the utility must send for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level) the grouped notices within 30 days of the end of each quarter.

(7) A utility may withhold from publication information on the contract award or the conclusion of the framework agreement where the release of the information—

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the commercial interests of any person; or
- (c) might prejudice fair competition between economic operators.

(8) In the case of contracts for research and development services, the information in paragraph (2) concerning the nature and quantity of the services may be limited to—

- (a) where the contract has been awarded by a negotiated procedure without a call for competition in accordance with regulation 48(1)(b) (use of the negotiated procedure without prior call for competition), the indication “R & D Services”; and
- (b) where the contract has been awarded by a procedure with a call for competition, information at least as detailed as was indicated in the notice that was used as a means of calling for competition.

Commencement Information

I4 [Reg. 68](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

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Form and manner of sending notices for publication at EU level

69.—(1) The notices required by regulations 65 to 68 to be sent for publication in accordance with this regulation must—

- (a) be sent by electronic means to the EU Publications Office for publication; and
- (b) where the Commission has published standard forms for such notices, be set out using such forms.

(2) A utility must ensure that it is able to supply proof of the dates on which notices are sent to the EU Publications Office for publication.

(3) Where the EU Publications Office has given the utility confirmation of the receipt of the notice and of the publication of the information sent, indicating the date of that publication, that confirmation shall constitute proof of publication.

(4) A utility may send notices in respect of works, supply or service contracts to the EU Publications Office for publication even where the utility is not required to do so by these Regulations, provided such notices are sent by electronic means.

Commencement Information

I5 [Reg. 69](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Publication at national level

70.—(1) In addition to the publication of the notices referred to in regulations 65 to 68 by the EU Publications Office, a utility may publish the information contained in such notices on the internet on a buyer profile.

(2) A buyer profile may also include—

- (a) periodic indicative notices which are published on it pursuant to regulation 65(3)(b) (periodic indicative notices);
- (b) information on on-going invitations to tender, scheduled purchases, contracts concluded, procedures cancelled; and
- (c) any useful general information, such as a contact point, telephone and fax number, postal address and e-mail address.

(3) The notices referred to in regulations 65 to 68, and the information contained in them, must not be published at national level before the notices are published by the EU Publications Office.

(4) Notwithstanding paragraph (3), publication may take place at national level where a utility has not been notified of the publication by the EU Publications Office within 48 hours after confirmation of the receipt of the notice in accordance with Article 71(5) of the Utilities Contracts Directive.

(5) A notice published at national level must not contain information other than that contained in the notice sent to the EU Publications Office or published on a buyer profile, but must indicate the date of sending of the notice to the EU Publications Office or its publication on the buyer profile.

(6) Where a periodic indicative notice is to be published on a buyer profile—

- (a) the periodic indicative notice may not be so published before the utility sends to the EU Publications Office the notice referred to in regulation 65(4) (periodic indicative notices); and
- (b) the periodic indicative notice must indicate the date of that sending.

Commencement Information

16 [Reg. 70](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

Electronic availability of procurement documents

71.—(1) Subject to paragraph (2), a utility must offer on the internet unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with regulation 69 (form and manner of sending notices for publication at EU level) or the date on which an invitation to confirm interest was sent.

(2) Where the means of calling for competition is a notice on the existence of a qualification system, the access referred to in paragraph (1) must be offered as soon as possible and at the latest when the invitation to tender or to negotiate is sent.

(3) The text of the notice or the invitation must specify the internet address at which the procurement documents are accessible.

(4) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in regulation 38(3) (rules applicable to communication), a utility may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by means other than electronic means in accordance with the periods mentioned in paragraphs (7) and (8).

(5) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because a utility intends to apply regulation 37(3) (confidentiality), the utility must indicate, in one of the following, which measures, aimed at protecting the confidential nature of the information, the utility requires and how access can be obtained to the documents—

- (a) the notice;
- (b) the invitation to confirm interest; or
- (c) where the means of calling for competition is a notice on the existence of a qualification system, the procurement documents.

(6) Where paragraph (4) or (5) applies, the time limit for the submission of tenders must be extended by 5 days, except—

- (a) in a case of duly substantiated urgency referred to in regulation 43(5) (open procedure); or
- (b) where the time limit is set by mutual agreement in accordance with regulation 44(6) (restricted procedure) or 45(6) (negotiated procedure with prior call for competition).

(7) Provided that it has been requested in good time, a utility must supply to all tenderers taking part in the procurement additional information relating to the specifications and any supporting documents, not later than 6 days before the time limit fixed for the receipt of tenders.

(8) In the case of an accelerated open procedure, the period mentioned in paragraph (7) shall not be later than 4 days before the time limit fixed for the receipt of tenders.

Commencement Information

17 [Reg. 71](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

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Invitations to candidates

72.—(1) In a restricted procedure, a competitive dialogue procedure, an innovation partnership and a negotiated procedure with prior call for competition, an invitation by a utility to selected candidates or to participants to submit a tender must be issued simultaneously and in writing.

(2) In a competitive dialogue procedure, an innovation partnership and a negotiated procedure with or without prior call for competition, an invitation by a utility to selected candidates to participate must be issued simultaneously and in writing.

(3) Where the call for competition is made by means of a periodic indicative notice, as referred to in regulation 42(5)(a) (choice of procedures), the utility must, simultaneously and in writing, invite all economic operators which have expressed their interest following the publication of the periodic indicative notice to confirm their interest in writing.

(4) The invitations required by paragraphs (1) to (3) must—

- (a) include a reference to the electronic address at which the procurement documents have been made directly available by electronic means; or
- (b) be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons referred to in regulation 71(4) or (5) (electronic availability of procurement documents) and have not already been made otherwise available.

(5) The invitations required by paragraphs (1) and (2) must also contain at least the following information—

- (a) where tenders are to be submitted, the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
- (b) in the case of competitive dialogue, the date and the address set for the start of consultation and the language or languages to be used;
- (c) a reference to the call for competition published;
- (d) an indication of any documents to be attached;
- (e) the criteria for the award of the contract, where they are not indicated in the notice on the existence of a qualification system used as a means of calling for competition;
- (f) the relative weighting of criteria for the award of the contract or, where appropriate, the order of importance of such criteria, where they are not given in the contract notice, the notice on the existence of a qualification system or the specifications.

(6) An invitation to confirm interest referred to in paragraph (3) must also contain at least the following information—

- (a) the nature and quantity, including all options concerning complementary contracts and, if possible, the estimated time available for exercising such options for renewable contracts, the nature and quantity and, if possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
- (b) the type of procedure, namely restricted or negotiated procedure;
- (c) where applicable, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;
- (d) where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the languages in which they are to be drawn up;
- (e) the address of the utility;
- (f) economic and technical conditions, financial guarantees and information required from economic operators;

- (g) the form of the contract which is the subject of the invitation to tender, namely purchase, lease, hire or hire-purchase, or any combination of these; and
- (h) the contract award criteria and their relative weighting or, where appropriate, the order of importance of such criteria, if this information is not given in the periodic indicative notice or the specifications or in the invitation to tender or to negotiate.

Commencement Information

18 Reg. 72 in force at 18.4.2016, see [reg. 1\(2\)](#)

Informing applicants for qualification, candidates and tenderers

73.—(1) A utility must as soon as possible after reaching a decision concerning the award of a contract, the conclusion of a framework agreement or admittance to a dynamic purchasing system, inform each candidate and tenderer of the decision reached.

(2) Information provided in accordance with paragraph (1) must, where applicable, include the grounds for any decision—

- (a) not to conclude a framework agreement;
- (b) not to award a contract for which there has been a call for competition;
- (c) to recommence the procedure; or
- (d) not to implement a dynamic purchasing system.

(3) On request from the candidate or tenderer concerned, the utility must as soon as possible, and in any event within 15 days from receipt of a written request, inform—

- (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
- (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 58(13) and (14) (technical specifications), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;
- (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement; and
- (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.

(4) A utility may decide to withhold certain information referred to in paragraphs (2) and (3), where the release of such information—

- (a) would impede law enforcement or otherwise be contrary to the public interest;
- (b) would prejudice the commercial interests of any person; or
- (c) might prejudice fair competition between economic operators.

(5) A utility which establishes and operates a system of qualification must—

- (a) inform applicants of its decision as to qualification within a period of 6 months;
- (b) if the decision as to qualification will take longer than 4 months from the presentation of an application, inform the applicant within 2 months of the application of—
 - (i) the reasons justifying the longer period; and
 - (ii) the date by which the application will be accepted or refused;

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- (c) inform applicants whose qualification is refused of the refusal decision and the reasons for that decision as soon as possible and no more than 15 days after the date of the refusal decision.
- (6) A utility which establishes and operates a system of qualification must—
 - (a) base its reasons for decisions as to qualification on the criteria for qualification referred to in regulation 75(3) to (5) (qualification systems); and
 - (b) only bring the qualification of an economic operator to an end for reasons based on the criteria for qualification referred to in regulation 75(3) to (5) (qualification systems).
- (7) Any intention to bring the qualification of an economic operator to an end must be notified in writing to the economic operator at least 15 days before the date on which the qualification is due to end, together with the reasons justifying the proposed action.

Commencement Information

19 [Reg. 73](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

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