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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

**The Utilities Contracts (Scotland) Regulations 2016**

**PART 3**

**PARTICULAR PROCUREMENT REGIMES**

**CHAPTER 2**

**RULES GOVERNING DESIGN CONTESTS**

**Scope of Chapter**

**91.** This Chapter applies to—

- (a) design contests organised as part of a procedure leading to the award of a service contract provided that the estimated value net of VAT of the service contract including any possible prizes or payments to participants is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds); and
- (b) design contests where the total estimated value net of VAT of contest prizes and payments to participants, including the estimated value net of VAT of the service contract which might subsequently be concluded in accordance with regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) if the utility does not exclude such an award in the contest notice, is equal to or greater than the threshold referred to in regulation 15(1)(a) (thresholds).

**Notices**

**92.—(1)** A utility that intends to carry out a design contest must call for competition by means of a contest notice which includes the information set out in Annex XIX to the Utilities Contracts Directive.

(2) Where a utility intends to award a subsequent service contract under regulation 48(4)(f) (use of the negotiated procedure without prior call for competition) this must be indicated in the contest notice.

(3) A utility that has held a design contest must—

- (a) make the results known by means of a notice which must include the information set out in Annex XX to the Utilities Contracts Directive; and
- (b) send such notice to the EU Publications Office within 30 days of the closure of the design contest.

(4) A utility may withhold from publication information on the result of the contest 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.

(5) The utility must send the notices referred to in this regulation for publication in accordance with regulation 69 (form and manner of sending notices for publication at EU level).

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

**93.**—(1) When organising a design contest, a utility must apply procedures which are adapted to the provisions of Part 1 and this Chapter.

(2) The utility must not limit admission of participants to a design contest by reference to the territory or part of the territory of a member State.

(3) Where a design contest is restricted to a limited number of participants, the utility must—

- (a) lay down clear and non-discriminatory selection criteria; and
- (b) ensure that the number of candidates invited to participate is sufficient to ensure genuine competition in so far as there are enough qualified candidates.

(4) A utility must appoint a jury which must be composed exclusively of natural persons who are independent participants in the contest.

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

### **Decisions of the jury**

**94.**—(1) The jury must be autonomous in its decisions and opinions.

(2) The jury must 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 must 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 must 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 must be drawn up of the dialogue between jury members and candidates.