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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

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

**PART 2**

**RULES APPLICABLE TO CONTRACTS**

**CHAPTER 1**

**PROCEDURES**

**Competitive Dialogue**

**46.**—(1) In a competitive dialogue, a utility must permit any economic operator to submit a request to participate in response to a call for competition in accordance with regulation 42(5)(b) or (c) (choice of procedures) within the time period set by the utility in accordance with this regulation.

(2) A request by an economic operator referred to in paragraph (1) must be accompanied by the information for qualitative selection that is requested by the utility.

(3) The minimum time period for receipt of a request to participate, other than in exceptional circumstances, shall be 30 days from the date on which—

(a) the contract notice was [<sup>F1</sup>submitted] for publication; <sup>F2</sup>...

<sup>F2</sup>(b) .....

and shall, in any event, not be less than 15 days from such date.

(4) Only those economic operators invited to do so by the utility following its assessment of the information provided may participate in the dialogue.

(5) A utility may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 76(2) (criteria for qualitative selection).

(6) The contract must be awarded on the sole basis of the best price-quality ratio in accordance with regulation 80 (contract award criteria).

(7) A utility must in the call for competition, in a descriptive document or in both—

- (a) set out and define its needs and requirements;
- (b) set out and define the chosen award criteria; and
- (c) set out an indicative timeframe.

(8) A utility—

- (a) must open, with the participants selected in accordance with the relevant provisions of regulations 74 to 79, a dialogue with the aim of identifying and defining the means best suited to satisfying the utility's needs; and
- (b) may discuss all aspects of the procurement with such participants during this dialogue.

(9) During the dialogue, a utility—

- (a) must ensure equal treatment of all participants; and

**Status:** Point in time view as at 30/05/2023.

**Changes to legislation:** The Utilities Contracts (Scotland) Regulations 2016, Section 46 is up to date with all changes known to be in force on or before 02 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) must not provide information in a discriminatory manner which may give any participant an advantage over others.
- (10) In accordance with regulation 37 (confidentiality), a utility must not reveal to the other participants solutions proposed or other confidential information communicated by a candidate or tenderer participating in the dialogue without the candidate or tenderer's agreement.
- (11) Any agreement referred to in paragraph (10) shall not take the form of a general waiver but must be given with reference to the intended communication of specific information.
- (12) A utility may conduct a competitive dialogue in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage only by applying the award criteria specified in—
- (a) the call for competition; or
  - (b) the descriptive document.
- (13) The utility must indicate, in the contract notice or the descriptive document, 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.
- (15) When the utility has declared that the dialogue is concluded and informed the remaining participants, the utility must invite each remaining participant to submit their final tender on the basis of the solution or solutions presented and specified during the dialogue.
- (16) The final tenders—
- (a) shall contain all the elements required and necessary for the performance of the project; and
  - (b) may, subject to paragraph (17), be clarified, specified and optimised at the request of the utility.
- (17) Any clarification, specification, optimisation or additional information provided pursuant to a request referred to in paragraph (16)(b) must not involve changes to the essential aspects of the tender or the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where such changes are likely to distort competition or cause discrimination.
- (18) A utility must assess the tenders received on the basis of the award criteria laid down in the call for competition or in the descriptive document.
- (19) At the request of the utility, and subject to paragraph (20), negotiations with the tenderer identified as having submitted the tender presenting the best price-quality ratio in accordance with regulation 80 (contract award criteria) may be carried out to confirm financial commitments or other terms contained in the tender in order to finalise the terms of the contract.
- (20) Any negotiation and finalisation of the terms of the contract referred to in paragraph (19) must not involve changes to the essential aspects of the tender or the procurement, including the needs and requirements set out in the call for competition or in the descriptive document, where such changes are likely to distort competition or cause discrimination.
- (21) A utility may specify prizes or payments to the participants in the dialogue.

#### Textual Amendments

- F1** Word in reg. 46(3)(a) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **6(31)** (with sch. paras. 1-5)
- F2** [Reg. 46\(3\)\(b\)](#) and word omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **5(10)** (with reg. 3)

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#### **Commencement Information**

**II** [Reg. 46](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

**Status:**

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**Changes to legislation:**

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