
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 3

Choice of participants and award of contracts

General principles

- 74.**—(1) For the purpose of selecting participants in their procurement, a utility—
- (a) which has provided rules and criteria for the exclusion of tenderers or candidates in accordance with regulations 76(1) (criteria for qualitative selection) or 78 (use of exclusion grounds and selection criteria provided for under the Public Contracts (Scotland) Regulations), must exclude economic operators identified in accordance with such rules and fulfilling such criteria;
 - (b) must select tenderers and candidates in accordance with the objective rules and criteria mentioned in regulations 76 (criteria for qualitative selection) and 78 (use of exclusion grounds and selection criteria provided for under the Public Contracts (Scotland) Regulations);
 - (c) must, where appropriate and in accordance with regulation 76(2) and (3) (criteria for qualitative selection), reduce the number of candidates selected in accordance with subparagraphs (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 a procurement for the specific contracts which are the subject of the call for competition, a utility must—
- (a) qualify economic operators in accordance with regulation 75 (qualification systems);
 - (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.

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(3) When selecting participants for a restricted or negotiated procedure, a competitive dialogue or an innovation partnership, in reaching its decision as to qualification or when the criteria and rules are being updated, a utility must 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 an economic operator is or appears to be incomplete or erroneous, or where specific documents are missing, a utility may request the economic operator 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) A utility must 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 80 (contract award criteria) and 82 (abnormally low tenders), taking into account regulation 62 (variants).

(6) A utility may decide not to award a contract to, or conclude a framework agreement with, the tenderer submitting the most economically advantageous tender where the utility has established that the tender does not comply with applicable obligations in the fields of environmental, social and employment law established by ^{F1}... national law, collective agreements or [^{F2}, subject to paragraphs (6A) and (6B),] by the international environmental, social and employment law provisions listed in Annex XIV to the Utilities Contracts Directive as amended from time to time.

[^{F3}(6A) Where—

- (a) the United Kingdom has ratified an international agreement establishing obligations in any of the fields mentioned in paragraph (6), and
- (b) the agreement is not already listed,

the Scottish Ministers may make regulations providing that paragraph (6) is to have effect as if the agreement were listed.

(6B) Where the United Kingdom has ceased to ratify an international agreement that is already listed, the Scottish Ministers may make regulations providing that paragraph (6) is to have effect as if the agreement were not listed.

(6C) In paragraphs (6A) and (6B)—

- (a) “listed” means listed as described in paragraph (6), and
- (b) where paragraph (6) already has effect as if an agreement were listed, “already listed” includes that agreement.]

(7) In open procedures, a utility may decide to examine tenders before verifying the suitability of tenderers, provided that the relevant provisions of regulations 74 to 82 are observed.

Textual Amendments

- F1** Words in [reg. 74\(6\)](#) omitted (31.12.2020) by virtue of [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [6\(43\)\(a\)\(i\)](#) (with sch. paras. 1-5)
- F2** Words in [reg. 74\(6\)](#) inserted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [6\(43\)\(a\)\(ii\)](#) (with sch. paras. 1-5)
- F3** [Reg. 74\(6A\)-\(6C\)](#) inserted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [6\(43\)\(b\)](#) (with sch. paras. 1-5)

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Commencement Information

II [Reg. 74](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

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Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(b\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)
- reg. 74(6) words inserted by [S.S.I. 2019/112 reg. 5\(44\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 74(6) words omitted by [S.S.I. 2019/112 reg. 5\(44\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Pt. 5A inserted by [S.S.I. 2019/112 reg. 5\(61\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 3(2)-(2C) substituted for reg. 3(2) by [S.S.I. 2019/112 reg. 5\(3\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 15A inserted by [S.S.I. 2019/112 reg. 5\(7\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 20(1)(d)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 38A inserted by [S.S.I. 2019/112 reg. 5\(26\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) reg. 41 renumbered as reg. 41(1) by [S.S.I. 2019/112 reg. 5\(27\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words omitted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(i) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(aa) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(ii) omitted by virtue of S.S.I. 2019/114, reg. 2(5)(a)(ii)(bb))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(iii) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(cc) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(i) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk.

- S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(iii) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
 - reg. 41(2) inserted by [S.S.I. 2019/112 reg. 5\(27\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 50(25)(25A) substituted for reg. 50(25) by [S.S.I. 2019/112 reg. 5\(33\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 66(2A) inserted by [S.S.I. 2019/112 reg. 5\(38\)\(b\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 69(5)(6) inserted by [S.S.I. 2019/112 reg. 5\(41\)\(f\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 74(6A)-(6C) inserted by [S.S.I. 2019/112 reg. 5\(44\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 100(3)(3A) substituted for reg. 100(3) by [S.S.I. 2019/112 reg. 5\(58\)\(c\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
 - reg. 100(4A) inserted by S.S.I. 2019/112, reg. 5(58)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(c\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))