
STATUTORY INSTRUMENTS

1996 No. 2911

The Utilities Contracts Regulations 1996

PART V

THE AWARD OF A CONTRACT

Criteria for the award of a contract

21.—(1) Subject to regulation 22, a utility shall award a contract on the basis of the offer which—

- (a) is the most economically advantageous to the utility; or
- (b) offers the lowest price.

(2) The criteria which a utility may use to determine that an offer is the most economically advantageous include delivery date or period for completion, running costs, cost effectiveness, quality, aesthetic and functional characteristics, technical merit, after sales service and technical assistance, commitments with regard to spare parts, security of supply and price.

(3) Where a utility intends to award a contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in any contract notice or in the contract documents.

(4) Where a utility awards a contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if—

- (a) the offer meets the minimum requirements of the utility; and
- (b) it has stated those minimum requirements and any specific requirements for the presentation of an offer offering variations in the contract documents,

but if the utility will not take account of offers which offer such variations it shall state that fact in the contract documents.

(5) A utility may not reject a tender on the ground that the tender is based on, or the technical specifications in the tender have been defined by reference to, European specifications (within the meaning of regulation 12(1)) or national technical specifications recognised as complying with the essential requirements of Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative procedures in the member States relating to construction products⁽¹⁾.

(6) If a utility wishes to reject an offer for a contract because it is abnormally low it may do so only if it has requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low, which request may set a reasonable period for reply, and has—

- (a) if awarding the contract on the basis of the offer which offers the lowest price, examined the details of all the offers made, taking into account any explanation given to it of the abnormally low offer, before awarding the contract, or

(1) OJ No. L40, 11.2.89, p. 12.

- (b) if awarding the contract on the basis of the offer which is the most economically advantageous, taken into account any such explanation in assessing which is the most economically advantageous offer,

and, in considering that explanation, the utility may take into account explanations which justify the offer on objective grounds including the economy of the construction or production method, the technical solutions suggested by the provider or the exceptionally favourable conditions available to the provider for the performance of the contract or the originality of the goods, works or services proposed by the provider.

(7) A utility may reject a tender for a contract which is abnormally low owing to the receipt of state aid within the meaning of article 92 of the Treaty but only if it has consulted the provider and the provider has not been able to show that the aid in question has been notified to the Commission pursuant to article 93(3) of the Treaty or has received the Commission's approval.

(8) A utility which rejects a tender in accordance with paragraph (7) above shall send a report to the Minister for onward transmission to the Commission.

(9) For the purposes of this regulation "offer" includes a bid by one part of a utility to supply goods, carry out a work or works or provide services to another part of the utility when the former part is invited by the latter part to compete with the offers sought from other persons.

Rejection of third country offers

22.—(1) In this regulation an offer of third country origin is an offer to enter a supply contract under which more than 50% of the value of the goods offered originate, as determined in accordance with Council Regulation (EEC) No. 802/68(2), in States with which the Communities have not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings in member States to the markets of those States or in States to which the benefit of the provisions of Council Directive 93/38/EEC(3) has not been extended.

(2) Notwithstanding regulation 21, a utility need not accept an offer of third country origin.

(3) Notwithstanding regulation 21, where an offer of third country origin is equivalent to an offer which is not of third country origin a utility shall not accept the offer of third country origin unless not to accept that offer would oblige the utility to acquire goods having technical characteristics different from those of existing goods or an installation resulting in incompatibility, technical difficulties in operation and maintenance or disproportionate costs.

(4) In the case of a supply contract to be awarded on the basis of the offer which offers the lowest price offers are equivalent for the purposes of paragraph (3) above if their prices are to be treated as equivalent in accordance with paragraph (6) below.

(5) In the case of a supply contract to be awarded on the basis of the offer which is the most economically advantageous to the utility offers are equivalent for the purposes of paragraph (3) above if their prices are to be treated as equivalent in accordance with paragraph (6) below and if disregarding any difference in price the offer which is not of third country origin is at least as economically advantageous to the utility as the offer of third country origin.

(6) The prices of offers are to be treated as equivalent for the purposes of paragraphs (4) and (5) above if the price of the offer which is not of third country origin is the same as or is not more than 3% greater than the offer of third country origin.

(2) OJ No. L148, 28.6.68, p.1, as amended by Council Regulation (EEC) No. 3860/87 (OJ No. L363, 23.12.87, p. 30).

(3) OJ No. L199, 9.8.93, p.84.

Contract award notice

23.—(1) A utility which has awarded a supply, works or Part A or Part B services contract (other than one excluded or exempted from the application of these Regulations by regulations 6 to 10) shall no later than two months after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part F of Schedule 5 and including the information therein specified.

(2) A utility may indicate that any of the information included in paragraphs 6 and 9 of the contract award notice is of a sensitive commercial nature, and require that it be not published or, in the case of a Part B services contract, state in the contract award notice whether it agrees to the notice's publication.

(3) Where a utility has awarded a services contract for services falling within category 8 of Part A of Schedule 4 it may, if the contract was awarded in accordance with regulation 16(1)(b), insert in paragraph 3 of the contract award notice only the title of the category of services: if the services contract was not awarded in accordance with regulation 16(1)(b), the utility may provide limited information at paragraph 3 of the contract award notice if the information which would otherwise be given is of a commercially sensitive nature, provided that the information given is no less detailed than that already provided in either its call for competition, in accordance with regulation 15(2), or where a qualification system is used, than that recorded in accordance with regulation 18(9).