
STATUTORY INSTRUMENTS

1996 No. 2911

The Utilities Contracts Regulations 1996

PART VI

MISCELLANEOUS

Obligations relating to employment protection and working conditions

24. A utility which includes in the contract documents relating to a works or services contract information as to where a contractor or services provider may obtain information about the obligations relating to employment protection and working conditions which will apply to the works or services to be carried out or provided under the contract, shall request contractors or services providers to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

Sub-contracting

25. A utility may require a provider to indicate in his tender what part of the contract if any he intends to sub-contract to another person.

Preservation of records

26.—(1) When these Regulations apply to the seeking of offers in relation to a contract a utility shall keep appropriate information on each such contract sufficient to justify decisions taken in connection with—

- (a) the qualification and selection of providers and the award of contracts;
- (b) the recourse to derogations from the requirement that European specifications be referred to pursuant to regulation 12(4); and
- (c) the use of a procedure without a call for competition pursuant to regulation 16.

(2) When a utility decides not to apply these Regulations to the seeking of offers in relation to a contract in accordance with regulation 6, 7, 8 or 10 it shall keep appropriate information on such a contract sufficient to justify that decision.

(3) The information referred to in paragraphs (1) and (2) above shall be preserved for at least four years from the date of the award of the contract.

Statistical and other reports

27.—(1) A utility shall each year, by the date notified to it by the Minister, send to the Minister a report specifying the aggregate value (estimated if necessary) of the consideration payable under contracts awarded in the previous year which have been excluded from the operation of these Regulations by regulation 10 (Thresholds) for the purpose of carrying out the activities in each Part of Schedule 1 in which the utility is specified.

(2) A utility when requested shall for the purpose of informing the Commission send to the Minister a report—

- (a) containing such information as the Minister may from time to time require in respect of a particular contract (including contracts excluded or exempted from the application of all or some of these Regulations by regulations 6 to 10);
- (b) specifying which of its activities it considers are not activities specified in the Part of Schedule 1 in which the utility is specified, or are activities outside the territory of the Communities not involving the physical use of a network or geographical area within the Communities; and
- (c) specifying the categories of goods, works or services it considers comprise the goods, works or services which it acquires in order to sell, hire or provide them to another person, but which it does not have a special or exclusive right to sell, hire or provide and which other persons are free to sell, hire or provide under the same conditions.

(3) A utility may indicate that any of the information included in a report sent to the Minister pursuant to paragraph 2(c) above is of a sensitive commercial nature, and require that it be not published.

Provision of reports

28.—(1) Any reference to the Minister in these Regulations shall be deemed to be a reference to the Minister responsible for that utility.

(2) The Minister responsible for a utility shall be the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the utility; and any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a utility shall be determined by the Treasury whose determination shall be final.

(3) The requirement on a utility to send any report in accordance with regulations 8(3), 9(3)(b)(ii)(aa), 21(8) and 27 to the Minister shall be enforceable, on the application of the Minister responsible, by mandamus, or in Scotland, by an order for specific performance.

(4) Proceedings under paragraph (3) above brought in Scotland shall be brought before the Court of Session.

(5) In the application of this regulation to Northern Ireland references to the Minister shall include references to the Head of a Northern Ireland Department.

(6) The Minister to whom a report is sent in accordance with regulations 8(3), 9(3)(b)(ii)(aa), 21(8) and 27 shall send the report to the Treasury for onward transmission to the Commission.

Publication of notices

29.—(1) Any notice required by these Regulations to be sent to the Official Journal shall be sent by the most appropriate means to the Office for Official Publications of the European Communities⁽¹⁾.

(2) The utility shall retain evidence of the date of despatch to the Official Journal of each notice.

(3) The utility may in exceptional cases request that a contract notice be published within 5 days of the date of despatch, provided that it is sent by electronic mail, telex or facsimile⁽²⁾.

(1) The address for the Office for Official Publications of the European Communities is 2 rue Mercier, L-2985, Luxembourg (tel 499 28-1, telex 1324 PUBOF LU, fax 29 29 42 670, 49 00 03, 49 57 19).

(2) The Office for the Official Publications is required by article 25(3) of Council Directive 93/38/EEC (OJNo. L199, 9.8.93, p. 84) to publish notices within 12 days of the date of despatch, and to endeavour to publish contract notices within 5 days of the date of despatch in response to a request pursuant to this paragraph.

(4) The utility may publish the information contained in a contract notice or notice of a design contest in accordance with regulation 31(2) in such other way as it thinks fit but it shall not do so until the notice has been despatched in accordance with paragraph (1) above and shall not publish any information other than that contained in the notice.

Confidentiality of information

30. A utility which makes information available to a provider pursuant to these Regulations may impose requirements on him for the purpose of protecting the confidentiality of that information.

Design contests

31.—(1) This regulation shall apply to a design contest—

- (a) if it is organised as part of a procedure leading to the award of a services contract other than a contract excluded from the operation of these Regulations by regulation 6, 7, 8 or 10 above, or
- (b) whether or not it is organised as part of a procedure leading to the award of such a contract, if—
 - (i) The contest is conducted for the purpose of carrying out an activity specified in any Part of Schedule 1 in which the utility is specified, and
 - (ii) the aggregate of the value of the prizes or payments for the contest is not less than 400,000 ECU, unless the utility is one specified in Part T of Schedule 1 in which case the aggregated value shall be not less than 600,000 ECU.

(2) The utility shall publicise its intention to hold a design contest by sending to the Official Journal a notice in a form substantially corresponding to that set out in Part G of Schedule 5 and containing the information therein specified.

(3) The utility shall make the rules of the design contest available to services providers who wish to participate in the contest.

(4) The utility may restrict the number of persons invited to participate in the design contest, but it shall make the selection on the basis of clear and non-discriminatory criteria.

(5) The utility shall take account of the need to ensure adequate competition in determining the number of persons invited to participate in the design contest.

(6) Paragraphs (2), (4) and (5) of regulation 20 apply to design contests as they apply to the seeking of offers in relation to a proposed services contract.

(7) The utility shall provide for the participants' proposals to be submitted to the jury without any indication as to the authorship of each proposal.

(8) The utility shall ensure that the members of the jury are all individuals who are independent of participants in the design contest and, when the participants are required to possess a particular professional qualification, that at least one third of the members of the jury also possess that qualification or an equivalent qualification.

(9) The utility shall ensure that the jury makes its decision independently and solely on the basis of the criteria set out in the notice referred to in paragraph (2) above.

(10) The utility shall, no later than 2 months after the date by which the jury makes its selection, publicise the results of the design contest by sending to the Official Journal a notice substantially corresponding to the form set out in Part H of Schedule 5 and including the information therein specified.