STATUTORY INSTRUMENTS

2016 No. 274

PUBLIC PROCUREMENT, ENGLAND AND WALES
PUBLIC PROCUREMENT, NORTHERN IRELAND

The Utilities Contracts Regulations 2016

Made - - - - 11th March 2016

Laid before Parliament 17th March 2016

Coming into force in accordance with regulation 1(2) to (4)

[F1][F2]The Minister for the Cabinet Office is designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to public procurement .

[F3]The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by section 2(2) of, as read with paragraph 1A of Schedule 2 to, that Act.

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Minister for the Cabinet Office that it is expedient for certain references to provisions of EU instruments to be construed as references to those provisions as amended from time to time.

F1 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), **section 27(1)(a)**, and by the European Union (Amendment) Act 2008 (c.7), **Part 1** of the Schedule.

F2 S.I. 2010/2473.

F3 Paragraph 1A was inserted by the Legislative and Regulatory Reform Act 2006 (c.51), **section 28**, and was amended by the European Union (Amendment) Act 2008, Part 1 of the Schedule and by S.I. 2007/1388.

Modifications etc. (not altering text)

C1 Instrument applied (with modifications) (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 2 para. 50** (with reg. 5)

PART 1

GENERAL

CHAPTER 1

CITATION, COMMENCEMENT, EXTENT, DEFINITIONS AND SUBJECT-MATTER

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Utilities Contracts Regulations 2016.

Commencement

(2) Except for the provisions mentioned in paragraphs (3) and (4), these Regulations come into force on 18th April 2016.

(3) Paragraphs (1) to (7) of regulation 40 come into force—

(a) for the purposes of regulations 45(6), 52(13), 54(4), 73(4) and 124(2)(a) on 18th April 2016

(b) for the purposes of regulation 55(7), on 18th April 2017;

(c) for all other purposes, on 18th October 2018.

(4) Regulation 55(7) comes into force on 18th April 2017.

Extent

(5) These Regulations do not extend to Scotland.

Definitions

2.—(1) In these Regulations—

"accelerated open procedure" means an open procedure in which the utility has exercised the power conferred by regulation 45(5) to fix a time limit for the receipt of tenders which is shorter than the minimum specified in regulation 45(2).

"ancillary purchasing activities" means activities consisting of the provision of support to purchasing activities, in particular in the following forms—

(a) technical infrastructure enabling utilities to award public contracts or to conclude framework agreements for works, supplies or services;

(b) advice on the conduct or design of procurement procedures;

(c) preparation and management of procurement procedures on behalf and for the account of the utility concerned;

"call for competition" means a call for competition made in a manner permitted by regulation 44(4) or, where relevant, one of the notices referred to in regulation 91(1) or a contest notice;

"candidate" means an economic operator that has sought an invitation or has been invited to take part in a restricted or negotiated procedure, a competitive dialogue or an innovation partnership;

"central purchasing body" means a utility, within the meaning of regulation 5, or a contracting authority, within the meaning of regulation 2(1) of the Public Contracts Regulations, which provides centralised purchasing activities and which may also provide ancillary purchasing activities;

"centralised purchasing activities" has the meaning given by regulation 55(10);

F4 …

"contest notice" means the notice referred to in regulation 95(1);

"contracts", except as provided for in regulation 122(10), means contracts for pecuniary interest concluded in writing between one or more utilities and one or more economic operators and having as their object the execution of works, the supply of products or the provision of services.

"contract notice" means the notice referred to in regulation 69 or, where relevant, 91(1)(a);

"contracting authorities" has the meaning given to it by regulation 4;

[F5"covered by regulation 3(2)", in relation to an activity, an element, a part of a contract, or procurement, means that regulation 3(2)—

(a) applies to that activity, element, part or procurement, or

(b) would do so if these Regulations applied;**]**

"CPV" means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002 of the European Parliament and of the Council F6 as amended from time to time;

"Defence and Security Regulations" means the Defence and Security Public Contracts Regulations 2011 F7;

"design contests" except as provided for in regulation 122(10), means those procedures which enable a utility to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

[F8"devolved Northern Ireland authority" means a contracting authority whose functions are wholly or mainly functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

"devolved Welsh authority" has the meaning given by section 157A of the Government of Wales Act 2006;**]**

"disabled", in relation to a person, means a disabled person within the meaning of the Equality Act 2010 F9 and, in relation to a worker, means a disabled person who is a worker;

"dynamic purchasing system" except as provided for in regulation 122(10), means the system referred to in regulation 52;

"economic operator" means any person, or a utility, or a group of such persons or utilities or both, including any temporary associations of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market;

[F10"electronic document" has the meaning given in Article 3(35) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market;**]**

"electronic means" means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

[F11"electronic signature" has the meaning given in Article 3(10) of Regulation (EU) No 910/2014 of the European Parliament and of the Council on electronic identification and trust services for electronic transactions in the internal market;**]**

F12 …

"European standard" means a standard adopted by a European standardisation organisation and made available to the general public;

"framework agreement" except as provided for in regulation 122(10), has the meaning given by regulation 51(2);

"GPA" means the Agreement on Government Procurement **[**F13signed at Marrakesh on 15th April 1994, as amended on or before **[**F14 16th May 2021**]]**;

[F15"GPA party" means any country, state or separate customs territory that is—

(a) listed in Schedule A1; or

(b) a member State of the EU;**]**

"innovation" means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations including with the purpose of helping to solve societal challenges or to support F16... sustainable and inclusive growth;

"international standard" means a standard adopted by an international standardisation organisation and made available to the general public;

"invitation to confirm interest" means, except in regulation 49(18) and (19), an invitation which a utility sends in order to comply with regulation 74(2);

"label" means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

"label requirements" means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

"legal person" means a person, whether governed by private law or public law, other than a natural person;

"life cycle" means all stages which are consecutive or interlinked, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

"national standard" means a standard adopted by a national standardisation organisation and made available to the general public;

"Official Journal" means the Official Journal of the European Union;

"periodic indicative notice" means the notice referred to in regulation 67, or where relevant, 91(1)(b);

"procurement" means the acquisition by means of a works, supply or service contract of works, supplies or services by one or more utilities from economic operators chosen by those utilities, provided that the works, supplies or services are intended for the pursuit of one of the activities referred to in regulations 9 to 15;

"procurement document" means any document produced or referred to by the utility to describe or determine elements of the procurement or the procedure, including the contract notice, the periodic indicative notice or the notices on the existence of a qualification system where they are used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

"Public Contracts Regulations" means the Public Contracts Regulations 2015 F17;

F18...

[F19“the Retained Treaties” means anything which is retained EU law by virtue of section 4 of the European Union (Withdrawal) Act 2018 because of the effect which the Treaty on European Union or TFEU had immediately before IP completion day in giving rise to any of the rights, powers, liabilities, obligations, restrictions, remedies and procedures mentioned in that section;**]**

“selection criteria”, means, except in regulation 96, selection criteria set out by the utility in accordance with regulations 78 or 80, or both;

“service contracts” means contracts which have as their object the provision of services other than those referred to in the definition of “works contracts”;

“standard” means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory;

“supply contracts” means contracts which have as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations;

“technical specifications” has the meaning given by regulation 60(3);

“tenderer” means an economic operator that has submitted a tender;

“TFEU” means the Treaty on the Functioning of the European Union **F20**;

F21...

[F22“the UK e-notification service” has the meaning mentioned in regulation 71(6), and references (in whatever terms) to the submission of notices to that service are to be construed in accordance with the provisions applied (and adapted) by regulation 71(6);**]**

“Utilities Contracts Directive” means Directive 2014/25/EU of the European Parliament and of the Council **F23**;

“utilities” except as provided for in regulation 122(10), has the meaning given to it by regulation 5;

“VAT” means value added tax;

“a work” means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function; but “works” is to be interpreted in accordance with paragraph (2);

“working day” means a day other than a Saturday, Sunday, Christmas Day, Good Friday or bank holiday within the meaning of the Banking and Financial Dealings Act 1971 **F24**;

“works contracts” means contracts which have as their object any of the following—

(d) the execution, or both the design and execution, of works related to one of the activities specified in Schedule 1;

(e) the execution, or both the design and execution, of a work;

(f) the realisation by whatever means of a work corresponding to the requirements specified by the utility exercising decisive influence on the type or design of the work; and

“written” or “in writing” means any expression consisting of words or figures which can be read, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

(2) Except in Part 5 any other expression used both in these Regulations and in the Utilities Contracts Directive has the meaning that it bears in that Directive.

(3) In these Regulations (except regulation 72(4)), any reference to a period of time, however expressed, is to be interpreted subject to the following requirements—

(a) the period must include at least 2 working days; and