
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 2

The Utilities Contracts (Scotland) Regulations 2006

PART 6

SPECIALISED CONTRACTS

Design contests

34.—(1) A utility which organises a design contest—

- (a) shall establish the rules for that design contest in accordance with the provisions of this regulation; and
- (b) shall not limit the admission of any economic operator to the design contest by reference to the territory or part of the territory of a relevant State.

(2) This regulation applies to a design contest if it is organised as part of a procedure leading to the award of a services contract whose estimated value (net of value added tax and including the value of any prizes or payments) is not less than the relevant threshold described in paragraph (4).

(3) This regulation applies to a design contest whether or not it is organised as part of a procedure leading to the award of a services contract if—

- (a) 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
- (b) the aggregate value of the prizes or payments for the contest, including the estimated value (net of value added tax) of the contract which might subsequently be awarded in accordance with regulation 17(1)(1) provided that the utility does not exclude such an award in the contest notice, is not less than the relevant threshold described in paragraph (4)

(4) The relevant threshold for the purpose of paragraphs (2) and (3) is 422 000 euro.

(5) This regulation does not apply to a design contest—

- (a) which is organised by the utility other than for the purpose of carrying out an activity specified in the Part of Schedule 1 in which the utility is specified;
- (b) which is organised by the utility for the purpose of carrying out any activity outside the territory of the Communities but only if the carrying out of that activity does not involve the physical use of a network or geographical area within the Communities;
- (c) which is classified as secret or where it must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the essential interests of the security of the United Kingdom requires it;
- (d) where different rules govern the procedures of the design contest and it is to be entered into in accordance with—

- (i) an international agreement to which the United Kingdom and a State which is not a relevant State are parties and it relates to a design contest intended for the joint implementation or exploitation of a project related to that agreement;

- (ii) an international agreement relating to the stationing of troops; or
 - (iii) the design contest procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members; or
- (e) organised by the utility for the purpose of carrying out an activity specified in column 2 of Schedule 1 where that activity is directly exposed to competition on markets to which access is unrestricted and this will be the case if one of the following conditions is satisfied–
- (i) the Office of Government Commerce has notified the Commission in accordance with Article 30 of the Utilities Directive that the activity concerned is directly exposed to competition on markets to which access is not restricted and–
 - (aa) the Commission has adopted a decision that an exemption should apply in response to such a notification; or
 - (bb) the Commission has not adopted a decision in relation to such a notification within the time limits specified in Article 30(6) of the Utilities Directive;
 - (ii) the Commission has, on the application of the utility–
 - (aa) adopted a decision that an exemption should apply to the activity concerned; or
 - (bb) has not adopted such a decision within the time limit specified in Article 30 of the Utilities Directive; or
 - (iii) the Commission has, of its own initiative–
 - (aa) adopted a decision that an exemption should apply to the activity concerned and for the purposes of this sub-paragraph that time limit commences on the date that the Commission has informed the Office of Government Commerce in accordance with Article 30 that the matter is under consideration.
- (6) The utility shall publicise its intention to hold a design contest by sending to the Official Journal a notice in the form of the design contest notice in Annex XII to Commission Regulation (EC) No. 1564/2005 and containing the information therein specified.
- (7) The utility shall make the rules of the design contest available to economic operators which wish to participate in the contest.
- (8) Regulations 28(2) and 29 apply to design contests as they apply to the seeking of offers in relation to a proposed contract.
- (9) Regulation 40(1)(b) to (7) applies to notices relating to design contests as it applies to notices in relation to a proposed contract.
- (10) Regulation 42(1),(2) and (4) applies to all communications relating to design contests as it applies to a proposed contract.
- (11) The utility shall ensure that the specified means of communication and the storage of information enables–
- (a) the integrity and confidentiality of information provided by those economic operators participating in the design contest to be maintained; and
 - (b) the jury to ascertain the contents of proposals only after the time limit for their submission has expired.
- (12) Where the utility requires that proposals are to be transmitted by electronic means, it shall ensure that–

- (a) details of the equipment which is necessary for the electronic receipt of proposals, including encryption, are available to all economic operators which wish to participate in the design contest; and
 - (b) the equipment for the electronic receipt of proposals complies with the requirements of regulation 42(6).
- (13) Where the utility restricts the number of economic operators in the design contest, it shall–
- (a) establish clear and non-discriminatory criteria to select those economic operators; and
 - (b) ensure that the number of economic operators selected is sufficient to ensure adequate competition.
- (14) The utility shall ensure that–
- (a) the members of the jury are all individuals who are independent of those economic operators participating in the design contest;
 - (b) where the economic operators 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;
 - (c) the proposals of the economic operators are submitted to the jury without any indication as to the authorship of each proposal;
 - (d) the jury makes its decisions or opinions independently and solely on the basis of the criteria specified in the notice referred to in paragraph (6);
 - (e) the jury is not informed of the authorship of any proposal until after it has reached its decision or opinion;
 - (f) the jury prepares minutes signed by its members in which it records–
 - (i) its ranking of the proposals based upon its assessment of each proposal’s merits; and
 - (ii) its observations or details of any issues upon which clarification is required in relation to each proposal; and
 - (g) the jury may invite the economic operators to answer any questions to clarify issues noted in the minutes referred to in sub paragraph (f) and shall record complete minutes of any such communications with economic operators.
- (15) The utility shall, not later than 2 months after the date the jury makes its selection, publicise the results of the design contest by sending to the Official Journal a notice in the form of the notice of the results of a design contest in Annex XIII to Commission Regulation [\(EC\) No. 1564/2005](#) and including the information therein specified.
- (16) When sending the notice of the results of a design contest to the Official Journal in accordance with paragraph (15), the utility may indicate that information regarding–
- (a) the number of proposals received;
 - (b) the identity of the economic operators; or
 - (c) prices;
- is of a sensitive commercial nature, and require that it not be published.