SCOTTISH STATUTORY INSTRUMENTS

2012 No. 89

The Utilities Contracts (Scotland) Regulations 2012

PART 3

PROCEDURES LEADING TO THE AWARD OF A CONTRACT

Award without a call for competition

17.—(1) A utility may seek offers in relation to a proposed contract without a call for competition in the following circumstances—

(a) in the absence of tenders, suitable tenders or applications in response to a procedure with a call for competition but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered;

(b) when the contract is to be awarded purely for the purposes of research, experiment, study or development but not where it has the purpose of securing profit or of recovering research and development costs and insofar as its award will not prejudice the competitive award of subsequent contracts which are, in particular, for the same purposes;

(c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may only be performed by a particular economic operator;

(d) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the utility, the time limits specified in regulation 22(2) to (11) cannot be met;

(e) when the contract to be awarded is a supply contract and the goods to be purchased or hired under the contract are required by the utility as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier, other than the supplier which supplied the existing goods or the installation, would oblige the utility to acquire goods having different technical characteristics which would result in—

(i) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or

(ii) disproportionate technical difficulties in the operation and maintenance of the goods or the installation;

(f) when a utility wants an economic operator which has entered into a works contract or a services contract with that utility to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have become necessary, and such work, works or services—

(i) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the utility; or

(ii) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract;

(g) subject to paragraph (2), when the utility wants an economic operator which has entered into a works contract with that utility following a call for competition which satisfies the requirement of regulation 16(1) to carry out new work or works which are a repetition of the work or works carried out under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into;

(h) in respect of a supply contract for the purchase or hire of goods quoted and purchased on a commodity market;

(i) when the contract to be awarded is to be awarded under a framework agreement which has been concluded in accordance with these Regulations and to which the provisions of regulation 18 apply;

(j) when the contract to be awarded is a supply contract, to take advantage of a particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices;

(k) when the contract to be awarded is a supply contract, to take advantage of particularly advantageous conditions for the purchase of goods in a closing down sale or in a sale brought about because a supplier is subject to a procedure referred to in regulation 26(5)(a), (b) and (c); and

(l) in the case of services contracts, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract.

(2) A utility must not seek offers without a call for competition in accordance with paragraph (1)(g) unless—

(a) the original contract was awarded after a call for competition;

(b) when the utility invited contractors to tender for or negotiate the contract it gave notice that a works contract for new work or works which would be a repetition of the work or works carried out under the original contract may be awarded without a call for competition in accordance with paragraph (1)(g); and

(c) in determining the estimated value of the original contract for the purposes of regulation 11 the utility took into account the value of the consideration which it expected to be payable for the new works.