SCOTTISH STATUTORY INSTRUMENTS

2012 No. 89

The Utilities Contracts (Scotland) Regulations 2012

PART 3

PROCEDURES LEADING TO THE AWARD OF A CONTRACT

Dynamic purchasing systems

19.—(1) A utility using a dynamic purchasing system must comply with this regulation.

(2) The utility which seeks to establish a dynamic purchasing system must comply with the requirements of regulation 42(2) to (7) and must use only electronic means to—

(a) establish that system; and

(b) award contracts under it.

(3) The utility must use the open procedure in accordance with these Regulations to establish a dynamic purchasing system up to the beginning of the procedure for the award of contracts under the system set out in this Regulation.

(4) When establishing a dynamic purchasing system, the utility must—

(a) send to the Official Journal as soon as possible after forming the intention a notice, in the form of the contract notice in Annex V to Commission Regulation (EC) No 1564/2005(**1**) stating that a dynamic purchasing system is to be established; and

(b) produce a specification which indicates—

(i) the nature of the goods, work, works or services intended to be purchased under that system; and

(ii) information concerning the purchasing system, the electronic equipment to be used in its operation, the arrangements for technical connection to the system, the rules governing its operation and any other necessary information relating to the system.

(5) When establishing a dynamic purchasing system the utility may also produce additional documents relating to the operation of the system.

(6) Where the utility establishes a dynamic purchasing system it must—

(a) offer unrestricted, direct and full access to the specification and to any additional documents by electronic means from the date of publication of the contract notice to the date when the system ceases to be operated; and

(b) indicate in the contract notice the internet address at which such documents may be examined.

(7) Throughout the duration of the dynamic purchasing system, the utility must—

(a) give any economic operator the opportunity to—

(i) submit an indicative tender; and

(**1**) The annex to Commission Regulation (EC) No 1564/2005 was amended by Commission Regulation (EC) 1150/2009, OJ L 313, 29.11.2009, p.3.

(ii) be admitted to that system under the conditions referred to in paragraph (8); and

(b) complete the evaluation of an indicative tender within 15 days from the date of its submission or such longer period as that utility may determine if no invitation to tender is issued under the system as provided in paragraph (13) within the 15 day period.

(8) The utility must admit to the dynamic purchasing system each economic operator which satisfies the selection criteria and has submitted an indicative tender which complies with the specification and any additional documents produced in accordance with paragraph (5) by the utility when establishing the system.

(9) The utility must as soon as possible notify an economic operator of its admission to a dynamic purchasing system or of the rejection of its indicative tender and must do so in writing if requested by the economic operator.

(10) An economic operator which is admitted to a dynamic purchasing system may improve its indicative tender at any time provided that the improved tender complies with the specification described in paragraph (4)(b).

(11) Where the utility proposes to award a contract under a dynamic purchasing system, it must send to the Official Journal as soon as possible after forming the intention a notice, in the form of a simplified contract notice on a dynamic purchasing system in Annex IX to Commission Regulation (EC) No 1564/2005, inviting economic operators to submit an indicative tender in accordance with paragraph (7)(a)(i) not less than 15 days from the date of the dispatch of the simplified contract notice.

(12) The indicative tenders received within the period specified in paragraph (11) must be evaluated by the utility for admittance to the dynamic purchasing system before it proceeds with the issue of invitations to submit tenders in relation to any contract to be awarded under the dynamic purchasing system to an economic operator admitted to the system.

(13) The utility must invite all economic operators admitted to the dynamic purchasing system to submit a tender for each contract within a time limit specified by the utility.

(14) For each contract to be awarded under the dynamic purchasing system the utility—

(a) must award the contract to the economic operator which submits the tender which best meets the award criteria specified in the contract notice for the establishment of the dynamic purchasing system; and

(b) may, if appropriate, formulate those award criteria more precisely in the invitation to submit tenders.

(15) The utility must by notice in writing as soon as reasonably practicable after a decision has been made in accordance with paragraph (14)(a), inform the economic operators that submitted tenders of its decision in relation to the award of the contract.

(16) The utility must not charge any economic operator seeking admission to a dynamic purchasing system or which has been admitted to such a system in relation to any aspect of that system.

(17) A dynamic purchasing system established by the utility must not be operated for more than 4 years, unless there are exceptional circumstances.

(18) The utility must not use a dynamic purchasing system improperly or in such a way as to prevent, restrict or distort competition.