
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 1

The Public Contracts (Scotland) Regulations 2006

PART 5

THE AWARD OF A PUBLIC CONTRACT

Criteria for the award of a public contract

30.—(1) Subject to regulation 18(27) and to paragraphs (6) and (9) of this regulation, a contracting authority shall award a public contract on the basis of the offer which—

- (a) is the most economically advantageous from the point of view of the contracting authority;
or
- (b) offers the lowest price.

(2) A contracting authority shall use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous including quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date and delivery period or period of completion.

(3) Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous it shall state the weighting which it gives to each of the criteria chosen in the contract notice or in the contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(4) When stating the weightings referred to in paragraph (3), a contracting authority may give the weightings a range and specify a minimum and maximum weighting where it considers it appropriate in view of the subject matter of the contract.

(5) Where, in the opinion of the contracting authority, it is not possible to provide weightings for the criteria referred to in paragraph (3) on objective grounds, the contracting authority shall indicate the criteria in descending order of importance in the contract notice or contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(6) If an offer for a public contract is abnormally low the contracting authority may reject that offer but only if it has—

- (a) requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low;
- (b) taken account of the evidence provided in response to a request in writing; and
- (c) subsequently verified the offer or parts of the offer being abnormally low with the economic operator.

(7) Where a contracting authority requests an explanation in accordance with paragraph (6), the information requested may, in particular, include—

- (a) the economics of the method of construction, the manufacturing process or the services provided;

- (b) the technical solutions suggested by the economic operator or the exceptionally favourable conditions available to the economic operator for the execution of the work or works, for the supply of goods or the provision of the services;
 - (c) the originality of the work, works, goods or services proposed by the economic operator;
 - (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed; or
 - (e) the possibility of the economic operator obtaining State aid.
- (8) Where a contracting authority establishes that a tender is abnormally low because the economic operator has obtained State aid, the offer may be rejected on that ground alone only after—
- (a) consultation with the economic operator; and
 - (b) the economic operator is unable to prove, within a reasonable time limit fixed by the contracting authority, that the aid was granted in a way which is compatible with the EC Treaty.
- (9) Where a contracting authority rejects an abnormally low offer in accordance with paragraph (8), it shall send a report justifying the rejection to the Scottish Ministers for onward transmission to the Commission.
- (10) In this regulation “offer” includes a bid by one part of a contracting authority to provide services, to carry out a work or works or to make goods available to another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice

31.—(1) Subject to paragraphs (2) and (3), a contracting authority which has awarded a public contract or concluded a framework agreement shall, not later than 48 days after the award or conclusion, send to the Official Journal a notice, in the form of the contract award notice in Annex III to Commission Regulation (EC) No. 1564/2005 including the information therein specified.

(2) Any of the information specified in the form of the contract award notice in Annex III to Commission Regulation (EC) No. 1564/2005 to be included in the contract award notice may be omitted in a particular case where to publish such information—

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would prejudice the legitimate commercial interest of any person; or
- (d) might prejudice fair competition between economic operators.

(3) A contracting authority shall not be required to send a contract award notice in accordance with paragraph (1) where it awards a contract under a framework agreement which has been concluded in accordance with regulation 19.

(4) A contracting authority which has awarded a contract under a dynamic purchasing system in accordance with regulation 20 may—

- (a) send the contract award notice in accordance with paragraph (1); or
- (b) retain any notice it is proposing to send to the Official Journal in accordance with paragraph (1) for a period of 3 months from the date that the first notice was retained.

(5) Where a contracting authority retains contract award notices in accordance with paragraph (4) (b), it shall send those contract award notices to the Official Journal not later than 48 days after the end of each period of 3 months.

(6) A contracting authority which has awarded a Part B services contract shall state in the contract award notice whether or not it agrees to its publication.

Information about contract award procedures

32.—(1) Subject to paragraph (13), a contracting authority shall as soon as possible after the decision has been made, inform any economic operator which submitted an offer, applied to be included amongst the economic operators to be selected to tender for or to negotiate the contract, or applied to be party to a framework agreement, of its decision in relation to—

- (a) the award of a contract; or
- (b) the conclusion of the framework agreement;

and shall do so by notice in writing by the most rapid means of communication practicable.

(2) The notice referred to in paragraph (1) shall include—

- (a) the criteria for the award of the contract; or
- (b) where practicable, the score obtained by—
 - (i) the economic operator which is to receive the notice; and
 - (ii) the economic operator—
 - (aa) to be awarded the contract; or
 - (bb) to become a party to the framework agreement; and
- (c) the name of the economic operator—
 - (i) to be awarded the contract; or
 - (ii) to become a party to the framework agreement.

(3) A contracting authority shall allow a period of at least 10 days to elapse between the date of despatch of the notice referred to in paragraph (1) and the date on which that contracting authority proposes to enter into the contract or to conclude the framework agreement.

(4) Subject to paragraph (13), if by midnight at the end of the second working day of the period referred to in paragraph (3), a contracting authority receives a request in writing from an economic operator which was sent a notice under paragraph (1), for the reasons why that economic operator was unsuccessful, the contracting authority shall inform that economic operator of the characteristics and relative advantages of the successful tender.

(5) A contracting authority shall give the information set out in paragraph (4) at least 3 working days before the end of the period referred to in paragraph (3), or where that is not possible, the period referred to in paragraph (3) shall be extended to allow at least 3 working days between the provision of the information set out in paragraph (4) and the date the contracting authority proposes to enter into the contract.

(6) Where a contracting authority is using the negotiated procedure in accordance with regulation 14(1)(a)(iv) and there is only one tender for the contract, that contracting authority need not comply with paragraphs (1) to (5).

(7) Where a contracting authority awards a contract under a framework agreement, that contracting authority need not comply with paragraphs (1) to (5).

(8) Where a contracting authority is seeking to establish a dynamic purchasing system in accordance with regulation 20, that contracting authority need not comply with paragraphs (1) to (5) but, subject to paragraph (13), shall as soon as possible after a decision has been made, inform any economic operator which applied to be admitted to a dynamic purchasing system of its decision in relation to admittance to that system and shall do so in writing if requested by the economic operator.

(9) Except for a request made in accordance with paragraph (4), which shall be dealt with in accordance with paragraphs (4) and (5) and subject to paragraph (13), a contracting authority shall within 15 days of the date on which it receives a request in writing from any economic operator which was unsuccessful (whether in accordance with regulation 15(11), 16(7), 16(8), 17(9), 17(10), 18(10), 18(11), 20(8) or 30)—

- (a) inform that economic operator of the reasons why it was unsuccessful; and
 - (b) if the economic operator submitted an admissible tender, the contracting authority shall inform that economic operator of the characteristics and relative advantages of the successful tender and—
 - (i) the name of the economic operator to be awarded the contract;
 - (ii) the names of the parties to the framework agreement; or
 - (iii) the names of the economic operators admitted to the dynamic purchasing system.
- (10) The reasons referred to in paragraph (9)(a) shall include any reason for the contracting authority's decision that the economic operator did not meet the technical specifications—
- (a) as specified in regulation 9(6) by an equivalent means; or
 - (b) in terms of the performance or functional requirements in regulation 9(7) by an equivalent means.
- (11) Subject to paragraph (13), a contracting authority shall as soon as possible after the decision has been made, inform any economic operator which submitted an offer, which applied to be included amongst the economic operators to be selected to tender for, to negotiate the contract or to be admitted to a dynamic purchasing system, of its decision to abandon or to recommence a contract award procedure in respect of which a contract notice has been published, in relation to—
- (a) the award of a contract;
 - (b) the conclusion of a framework agreement; or
 - (c) admittance to a dynamic purchasing system.
- (12) A contracting authority which informs an economic operator of its decision in accordance with paragraph (11) shall—
- (a) include the reasons for the decision; and
 - (b) provide the decision and reasons in writing if requested by the economic operator.
- (13) A contracting authority may withhold any information to be provided in accordance with paragraph (1), (4), (8), (9) or (11) where the disclosure of such information—
- (a) would impede law enforcement;
 - (b) would otherwise be contrary to the public interest;
 - (c) would prejudice the legitimate commercial interests of any economic operator; or
 - (d) might prejudice fair competition between economic operators.
- (14) A contracting authority shall prepare a record in relation to each public contract awarded by it, framework agreement concluded by it or dynamic purchasing system established by it, specifying—
- (a) the name and address of the contracting authority;
 - (b) the value of the consideration to be given under the contract, framework agreement or dynamic purchasing system and—
 - (i) the type of goods to be purchased or hired;
 - (ii) the work or works to be carried out; or
 - (iii) the services to be provided;
 - (c) where offers were evaluated in accordance with regulation 30, the names of the economic operators which submitted those offers and where the contracting authority has used the restricted procedure or negotiated procedure, the reasons why those economic operators were selected;
 - (d) the name of any economic operator—

- (i) to which the contract was awarded;
 - (ii) with which the framework agreement was concluded; or
 - (iii) which was admitted to the dynamic purchasing system;
 - and the reasons for having—
 - (aa) awarded the contract to, or concluded the framework agreement with, that economic operator; or
 - (bb) admitted that economic operator to the dynamic purchasing system;
 - (e) the names of the economic operators which were unsuccessful in the circumstances referred to in regulation 15(11), 16(7), 16(8), 17(9), 17(10), 18(10), 18(11), 20(8) or 30 and the reasons why they were unsuccessful;
 - (f) if known to the contracting authority, the parts of the contract or framework agreement that the economic operator to which the contract has been awarded or with which the framework agreement has been concluded, intends to sub contract to another economic operator;
 - (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 13 or 14 constituted grounds for using that procedure;
 - (h) in the case of a contracting authority which used the competitive dialogue procedure, details of the circumstances which constituted grounds for using that procedure in accordance with regulation 18(2); and
 - (i) where a contracting authority has abandoned a contract award procedure, the conclusion of a framework agreement or the establishment of a dynamic purchasing system, the reasons why the contracting authority has decided not to award the contract, to conclude the framework agreement or to establish the dynamic purchasing system as the case may be.
- (15) A contracting authority shall keep appropriate information to document the progress of contract award procedures conducted by electronic means.
- (16) If the Commission requests a report containing the information specified in paragraph (14), the contracting authority shall send a written report containing that information, or the main features of it, to the Scottish Ministers for onward transmission to the Commission.