SCOTTISH STATUTORY INSTRUMENTS

2006 No. 1

The Public Contracts (Scotland) Regulations 2006

PART 3

PROCEDURES LEADING TO THE AWARD OF A PUBLIC CONTRACT

The negotiated procedure

17.—(1) Subject to paragraph (2), a contracting authority using the negotiated procedure shall comply with this regulation.

(2) A contracting authority using the negotiated procedure in accordance with regulation 14 need only comply with paragraphs (9) and (10) of this regulation.

(3) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal as soon as possible after forming the intention a notice, in the form of the contract notice in Annex II to Commission Regulation (EC) No. 1564/2005, inviting requests to be selected to negotiate and containing the information therein specified.

(4) The contracting authority shall indicate whether the negotiated procedure will take place in successive stages in accordance with paragraph (22)–

(a) in the contract notice; or

(b) in that notice and the contract documents.

(5) Subject to paragraphs (7) and (8), the date which the contracting authority fixes as the last date for the receipt by it of requests to be selected to negotiate shall be specified in the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(6) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract when fixing time limits for the receipt of requests to be selected to negotiate the contract.

(7) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph (3) of Annex VIII to the Public Sector Directive, the time limit referred to in paragraph (5) may be reduced by 7 days.

(8) Where compliance with the minimum time limit of 37 days referred to in paragraph (5) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit–

(a) a time limit of not less than 15 days from the date of despatch of the contract notice; or

(b) where the contracting authority has transmitted the contract notice by electronic means in accordance with paragraph (7), a time limit of not less than 10 days from the date of despatch of the contract notice.

(9) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude an economic operator from those economic operators from which it will make the selection of economic operators to be invited to negotiate the contract only if the economic operator–

(a) may be treated as ineligible on a ground specified in regulation 23;

(b) fails to satisfy the minimum standards required of economic operators by the contracting authority of–

(i) economic and financial standing; or

(ii) technical or professional ability.

(10) The contracting authority shall make the selection of the economic operators to be invited to negotiate in accordance with regulations 23, 24, 25 and 26 and shall award the contract in accordance with regulation 30.

(11) Where there is a sufficient number of economic operators suitable to be selected to negotiate, the contracting authority may limit the number of economic operators which it intends to invite to negotiate the contract provided that the contract notice specifies–

(a) the objective and non discriminatory criteria to be applied in order to limit the number of economic operators in accordance with this paragraph; and

(b) the minimum number of economic operators, which shall be not less than 3, which the contracting authority intends to invite to negotiate and, where appropriate, the maximum number.

(12) The contracting authority shall ensure that the number of economic operators invited to negotiate is–

(a) sufficient to ensure genuine competition; and

(b) at least equal to the minimum number set by the contracting authority in accordance with paragraph (11)(b).

(13) Subject to paragraph (12)(a), where–

(a) the contracting authority carries out a selection in accordance with regulations 23, 24, 25 and 26; and

(b) the number of economic operators selected to be invited to negotiate is less than the minimum number specified by the contracting authority in the contract notice;

the contracting authority may continue the award procedure with the economic operators which have been selected, provided that any economic operator not selected or which did not request to participate is not included.

(14) The contracting authority may require an economic operator to satisfy minimum levels of–

(a) economic and financial standing; and/or

(b) technical or professional ability;

provided that those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(15) The contracting authority shall send invitations in writing simultaneously to each economic operator selected to negotiate and the invitation shall–

(a) be accompanied by the contract documents;

(b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or

(c) where the contract documents are held by an entity other than the contracting authority, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.

(16) Where the contract documents are held by an entity other than the contracting authority, the contracting authority shall ensure that the contract documents are sent to economic operators by the most rapid means of communication possible.

(17) The contracting authority shall include in the invitation–

(a) the final date for the receipt by it of replies, the address to which they must be sent and the one or more languages in which they must be drawn up;

(b) a reference to the contract notice published in accordance with paragraph (3);

(c) an indication of the information to be included with the reply which the contracting authority may require to be provided in accordance with regulations 24, 25 and 26; and

(d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with paragraph (3).

(18) The contracting authority or entity referred to in paragraph (15)(c) shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator provided that the request for such information is received in sufficient time to enable the contracting authority to supply it–

(a) not less than 6 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders; or

(b) in the case of urgency where paragraph (8) applies, not less than 4 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders.

(19) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where–

(a) an economic operator requests the contract documents in sufficient time to allow a contracting authority to respond in accordance with paragraph (18) and, for whatever reason, the contract documents are not supplied in accordance with that paragraph; or

(b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(20) Where the contracting authority needs to identify the best tender in order to award the public contract in accordance with regulation 30(1), that contracting authority shall negotiate with economic operators which have submitted tenders with the aim of adapting the tenders to the requirements specified in the contract documents.

(21) During any negotiations which take place in accordance with this regulation, a contracting authority shall ensure equal treatment among all economic operators and in particular, shall not provide information in a discriminatory manner which may give some economic operators an advantage over other economic operators.

(22) The contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract documents.

(23) Where the contracting authority provides for the negotiated procedure to take place in successive stages in accordance with paragraph (22), it shall ensure that the number of economic operators to be invited to negotiate the contract at the final stage is sufficient to ensure genuine competition to the extent that there is a sufficient number of economic operators to do so.