
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 88

The Public Contracts (Scotland) Regulations 2012

PART 5

THE AWARD OF A PUBLIC CONTRACT

Criteria for the award of a public contract

30.—(1) Subject to regulation 18(28) and to paragraphs (6) and (9) of this regulation, a contracting authority must 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) In order to determine that an offer is the most economically advantageous, a contracting authority must use criteria linked to the subject matter of the contract which may include 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 must 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 must 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 TFEU.
- (9) Where a contracting authority rejects an abnormally low offer in accordance with paragraph (8), it must 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 must, 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](#)(1) 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 is not 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 must send those contract award notices to the Official Journal not later than 48 days after the end of each period of 3 months.

(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.

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

Information about contract award procedures and standstill period

32.—(1) Subject to paragraphs (4) and (10), a contracting authority must by notice in writing as soon as possible after the decision has been made, inform all tenderers and all candidates concerned (if any) of its decision to—

- (a) award the contract; or
- (b) conclude the framework agreement.

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

- (a) the criteria for the award of the contract;
- (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;

(c) the name of the economic operator—

- (i) to be awarded the contract; or
- (ii) to become a party to the framework agreement;

(d) in the case of an unsuccessful economic operator, a summary of the reasons why the economic operator was unsuccessful;

(e) in the case of an unsuccessful tenderer, the characteristics and relative advantages of the successful tender; and

(f) a precise statement of the effect of paragraph (3) on the economic operator which is to receive the notice.

(3) A contracting authority must allow a period of at least the relevant standstill period to elapse between the date of dispatch of the notice referred to in paragraph (1) and the date on which that contracting authority enters into the contract or concludes the framework agreement.

(4) Paragraphs (1) to (3) do not apply where—

- (a) the only tenderer is the economic operator to be awarded the contract or to become a party to the framework agreement, and there are no candidates concerned; or
- (b) the contract is a contract based on a framework agreement or a contract awarded under a dynamic purchasing system.

(5) Without prejudice to paragraph (4), paragraph (3) does not apply where—

- (a) the contract or framework agreement is exempt from the requirement for prior publication of a contract notice; or
- (b) there are no tenderers concerned or candidates concerned.

(6) Subject to paragraph (10), a contracting authority must within 15 days of the date on which it receives a request in writing from any economic operator which was unsuccessful—

- (a) inform that economic operator of the reasons why it was unsuccessful; and
- (b) in the case of an unsuccessful tenderer, other than a tenderer which has been informed by notice under paragraph (1), inform that economic operator of the characteristics and relative advantages of the successful tender and the name of—

- (i) the economic operator to be awarded the contract;
- (ii) the parties to the framework agreement; or
- (iii) the economic operators admitted to the dynamic purchasing system.

(7) The reasons referred to in paragraphs (2)(d) and (6)(a) include any reason for the contracting authority's decision that the economic operator did not meet the technical specifications or their equivalent—

- (a) as specified in regulation 9(6); or
- (b) in terms of the performance or functional requirements referred to in regulation 9(7).

(8) Subject to paragraph (10), a contracting authority must as soon as possible after the decision has been made, inform all candidates and tenderers 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) the establishment of a dynamic purchasing system.

(9) A contracting authority which informs an economic operator of its decision in accordance with paragraph (8) must include the reasons for the decision and, if so requested by the economic operator, must provide the decision and reasons in writing.

(10) A contracting authority may withhold any information to be provided in accordance with paragraph (1), (6) or (8) 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.

(11) A contracting authority must 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;
- (c) the type of goods to be purchased or hired, the work or works to be carried out or, as the case may be, the services to be provided;
- (d) 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;
- (e) 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;
- (f) the reasons for having—
 - (i) awarded the contract to, or concluded the framework agreement with, the economic operator referred to in sub-paragraph (e); or
 - (ii) admitted that economic operator to the dynamic purchasing system;

- (g) the names of the economic operators which were unsuccessful and the reasons why they were unsuccessful;
 - (h) 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;
 - (i) 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;
 - (j) 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
 - (k) 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.
- (12) A contracting authority must keep appropriate information to document the progress of contract award procedures conducted by electronic means.
- (13) If the Commission requests a report containing the information specified in paragraph (11), the contracting authority must send a written report containing that information, or the main features of it, to the Scottish Ministers for onward transmission to the Commission.