
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 88

The Public Contracts (Scotland) Regulations 2012

PART 8

MISCELLANEOUS

Statistical and other reports

40.—(1) Subject to regulation 41, a contracting authority must, not later than 31st July in each year, send to the Scottish Ministers a report specifying in relation to each public contract awarded by it or framework agreement concluded by it during the reporting period—

- (a) whether the contract was a public services contract, a public supply contract or a public works contract;
- (b) whether the framework agreement was for the provision of services, for the purchase or hire of goods or for the carrying out of work or works;
- (c) the value (estimated if necessary) of the consideration payable under the contract or framework agreement;
- (d) whether the open procedure, the restricted procedure, the negotiated procedure or the competitive dialogue procedure was used;
- (e) if the negotiated procedure was used, under which provision of regulation 13 or 14 that procedure was used;
- (f) in the case of—
 - (i) a public services contract or a framework agreement for the provision of services, the principal category of service provided or to be provided under the contract or framework agreement according to the nomenclature used in Schedule 3;
 - (ii) a public supply contract or a framework agreement for the purchase or hire of goods, the type of goods purchased or hired or to be purchased or hired under the contract or framework agreement; and
 - (iii) a public works contract or a framework agreement for the carrying out of works, the principal category of works carried out or to be carried out under the contract or framework agreement according to the nomenclature used in Schedule 2; and
- (g) the nationality of the economic operator to which the contract was awarded or the framework agreement was concluded and the relevant State in which that economic operator is established.

(2) Subject to regulation 41, a contracting authority must send to the Scottish Ministers a report containing such other information as the Scottish Ministers may from time to time require in respect of a particular public contract or framework agreement (including a public contract or framework agreement which is excluded from the application of these Regulations by regulation 6 or 8) for the purposes of providing the Commission with information.

(3) In this regulation “the reporting period” means the year preceding the year in which the reports referred to in paragraph (1) are to be made.

Provision of reports

41.—(1) Where a contracting authority is a Scottish public authority it must send the report to the Scottish Ministers otherwise it must send the report to the Minister responsible for that contracting authority and that Minister is responsible for sending the report to the Cabinet Office.

(2) The Minister responsible for a contracting authority is the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the contracting authority.

(3) Any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a contracting authority in accordance with paragraph (2) must be determined by the Cabinet Office whose determination is final.

(4) The requirement on a contracting authority to send any report in accordance with paragraph (1) to the Minister of the Crown responsible for that contracting authority is enforceable, on the application of the Minister responsible to the Court of Session by specific implement or the High Court in England and Wales or Northern Ireland, by mandatory order.

Publication of notices

42.—(1) Any notice required by these Regulations to be sent to the Official Journal must be—

- (a) in the correct format and contain the necessary information specified by [Commission Regulation \(EC\) No 1564/2005\(1\)](#) and contain any other information which the contracting authority considers useful; and
- (b) subject to paragraph (2), sent to the Office for Official Publications of the European Union by electronic means in the format and in accordance with the procedures specified in paragraph (3) of Annex VIII to the Public Sector Directive or by other means.

(2) Where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulation 16(6), 16(17) or 17(8) the notice must be sent by facsimile or by electronic means in the format and in accordance with the procedures referred to in paragraph (3) of Annex VIII to the Public Sector Directive.

(3) Where a notice is not sent by electronic means in accordance with paragraph (1)(b) or (2), it must not contain more than 650 words.

(4) The contracting authority must not place a notice in any publication—

- (a) before the date on which the notice is dispatched in accordance with paragraph (1)(b) or (2); or
- (b) which contains any additional information to that contained in the notice dispatched in accordance with paragraph (1)(b) or (2) or published on the contracting authority's buyer profile in accordance with regulation 11(1).

(5) The contracting authority must refer in the notice to the date of dispatch of that notice to the Official Journal or the date of its publication on its buyer profile where it publishes a notice in the circumstances referred to in paragraph (4).

(6) The contracting authority must not publish a prior information notice on its buyer profile before the date on which notice of its publication in that form is dispatched to the Commission in accordance with regulation 11(3) and the contracting authority must refer to the date of that dispatch on its buyer profile.

(7) The contracting authority must retain evidence of the date of dispatch to the Official Journal of each notice.

(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.

(8) Where the contracting authority is not required to send a contract notice to the Official Journal in respect of a particular public contract or framework agreement it may nevertheless publish such a notice in accordance with the provisions of this regulation.

Confidentiality of information

43.—(1) Subject to the provisions of these Regulations, a contracting authority must not disclose information forwarded to it by an economic operator which the economic operator has reasonably designated as confidential.

(2) In this regulation, confidential information includes technical or trade secrets and the confidential aspects of tenders.

Means of communication

44.—(1) A contracting authority may specify that any communication referred to in these Regulations may be made—

- (a) by post;
- (b) by facsimile;
- (c) by electronic means in accordance with paragraphs (4) and (5);
- (d) by telephone in the circumstances referred to in paragraph (8); or
- (e) by a combination of the means of communication.

(2) The means of communication specified by a contracting authority must be generally available and must not restrict economic operators' access to the contract award procedures specified in these Regulations.

(3) A contracting authority must ensure that the specified means of communication and of information storage enable—

- (a) the integrity of data provided by economic operators and the confidentiality of tenders and requests to be selected to tender for or to negotiate the contract to be maintained; and
- (b) tenders and requests to be selected to tender for or to negotiate the contract to be opened only after the time limit for their submission has expired.

(4) The equipment used for communications made by electronic means must be—

- (a) non-discriminatory;
- (b) generally available; and
- (c) interoperable with information and communication technology products in general use.

(5) Where a contracting authority requires that tenders and requests to be selected to tender for or to negotiate the contract are to be transmitted by electronic means, it must ensure that—

- (a) details of the equipment including any software which is necessary for the electronic receipt of tenders and requests to be selected to tender for or to negotiate the contract, including encryption, are available to all interested economic operators; and
- (b) the equipment for the electronic receipt of tenders and requests to be selected to tender for or to negotiate the contract complies with the requirements of paragraph (6).

(6) The requirements referred to in paragraph (5)(b) are—

- (a) electronic signatures relating to tenders and requests to participate must comply with national provisions adopted in accordance with Directive [1999/93/EC](#) of the European

Parliament and of the Council of 13th December 1999 on a Community framework for electronic signatures⁽²⁾;

- (b) the exact time and date of the receipt of tenders and requests to participate must be capable of being determined precisely;
- (c) it may reasonably be considered that—
 - (i) data is not capable of being accessed before the time limits specified by the contracting authority; and
 - (ii) any such unauthorised access is clearly detectable;
- (d) only authorised persons can set or change the dates for opening data received from economic operators;
- (e) access to any data must be possible only through simultaneous action by authorised persons and only after the prescribed date; and
- (f) data received and opened in accordance with these requirements must remain accessible only to authorised persons.

(7) A contracting authority may require any documents, certificates and declarations referred to in regulations 23 to 27 which do not exist in electronic format to be submitted before the time limit has expired for the receipt by it of tenders or requests to be selected to tender for or to negotiate the contract.

(8) Requests to be selected to tender for or to negotiate the contract may be made—

- (a) in writing; or
- (b) by telephone.

(9) Where a request to be selected to tender for or to negotiate the contract is made by telephone, an economic operator must confirm the request in writing before the deadline for receipt of such requests has expired.

(10) Where a request to be selected to tender for or to negotiate the contract is made by facsimile, a contracting authority—

- (a) may require that the request be confirmed by post or by electronic means where this is necessary for the purposes of legal proof; and
- (b) must specify any requirement for such confirmation and the time limit for sending it in the contract notice.

Sub-contracting

45. A contracting authority may require an economic operator to indicate in its tender—

- (a) any part of the contract that the economic operator intends to sub-contract to any other person; and
- (b) the identity of any person to whom that economic operator proposes to sub-contract any part of the contract.

Public service bodies

46.—(1) Where a contracting authority, other than one which is a contracting authority only by reason of being a Schedule 1 entity, grants to a person other than a contracting authority, special or exclusive rights to carry on a service for the benefit of the public, it must impose an express duty on that person in the terms referred to in paragraph (2).

(2) OJ L 13, 19.1.00, p.12. The Directive was amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council, OJ L 311, 21.11.2008, p.1.

(2) The duty referred to in paragraph (1) is a duty not to discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds—

- (a) of nationality, against a person who is a national of a relevant State and established in a relevant State; or
- (b) that the goods to be supplied under the contract originate in another relevant State.