
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 88

The Public Contracts (Scotland) Regulations 2012

PART 3

PROCEDURES LEADING TO THE AWARD OF A PUBLIC CONTRACT

Use of the negotiated procedure without prior publication of a contract notice

14.—(1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—

- (a) in the case of a public contract—
 - (i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract all of, and only, those economic operators which submitted a tender following an invitation made during the course of the discontinued open procedure, restricted procedure or competitive dialogue procedure (not being a tender or economic operator which was excluded in accordance with regulation 15(11), 16(7) or 18(10));
 - (ii) subject to paragraph (2), in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
 - (iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;
 - (iv) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in—
 - (aa) regulation 15 for the open procedure;
 - (bb) regulation 16 for the restricted procedure; or
 - (cc) regulation 17 for the negotiated procedure,cannot be met;
- (b) in the case of a public supply contract—
 - (i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;
 - (ii) subject to paragraph (3), when the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige

the contracting authority to acquire goods having different technical characteristics which would result in—

- (aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or
- (bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;
- (iii) for the purchase or hire of goods quoted and purchased on a commodity market;
- (iv) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale or in a sale brought about because a supplier is subject to a procedure referred to in regulation 23(4)(a), (b) or (c);
- (c) in the case of a public services contract, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;
- (d) in the case of a public works contract or a public services contract—
 - (i) subject to paragraph (4), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with the contracting authority to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original public works contract or public services contract but which through unforeseen circumstances have become necessary, and such work, works or services—
 - (aa) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the contracting authority; or
 - (bb) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract; and
 - (ii) subject to paragraph (5), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with that contracting authority to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

(2) A contracting authority using the negotiated procedure in accordance with paragraph (1)(a)(ii) must, if the Commission requests it, submit a report recording the fact that it has used that procedure to the Scottish Ministers for onward transmission to the Commission.

(3) A contracting authority must not use the negotiated procedure in accordance with paragraph (1)(b)(ii) if the term of the proposed contract, or the term of that contract and of any other contract entered into for the same purpose, is more than three years, unless there are reasons why it is unavoidable that this period should be exceeded.

(4) A contracting authority must not use the negotiated procedure in accordance with paragraph (1)(d)(i), where the aggregate value of the consideration to be given under contracts for the additional work, works or services exceeds 50 per cent of the value of the consideration payable under the original contract.

(5) A contracting authority must not use the negotiated procedure in accordance with paragraph (1)(d)(ii) unless—

- (a) the contract notice relating to the original contract stated that a public works contract or a public services contract for new work, works or services which would be a repetition of

the work or works carried out or the services provided under the original contract may be awarded using the negotiated procedure in accordance with paragraph (1)(d)(ii);

- (b) in determining the estimated value of the original contract for the purposes of regulation 8, the contracting authority took into account the value of the consideration which it expected to be payable for the new work, works or services; and
- (c) the procedure for the award of the new contract is commenced within 3 years of the original contract being entered into.