
SCOTTISH STATUTORY INSTRUMENTS

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The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 2

RULES ON PUBLIC CONTRACTS

SECTION 4

Techniques and Instruments for Electronic and Aggregated Procurement

Framework Agreements

34.—(1) A contracting authority may conclude a framework agreement, provided that the authority applies the procedures provided for in these Regulations.

(2) The term of a framework agreement must not exceed 4 years, save in exceptional cases duly justified, in particular by the subject of the framework agreement.

(3) A contract based on a framework agreement must be awarded in accordance with the procedures laid down in this regulation.

(4) The procedures referred to in paragraph (3) may be applied only between those contracting authorities clearly identified for that purpose in the call for competition or the invitation to confirm interest and those economic operators that are party to the framework agreement as concluded.

(5) A contract based on a framework agreement must under no circumstances entail substantial modifications to the terms laid down in that framework agreement, in particular in the case referred to in paragraph (6).

(6) Where a framework agreement is concluded with a single economic operator—

- (a) a contract based on that agreement must be awarded within the limits laid down in the framework agreement; and
- (b) for the award of such a contract, a contracting authority may consult in writing the economic operator which is party to the framework agreement, requesting it to supplement its tender as necessary.

(7) Where a framework agreement is concluded with more than one economic operator, that framework agreement must be performed in one of the following ways—

- (a) following the terms and conditions of the framework agreement, without reopening competition, where it sets out—
 - (i) all the terms governing the provision of the works, supplies or services concerned; and
 - (ii) the objective conditions for determining which of the economic operators that are party to the framework agreement must perform those works, supplies or

services (which conditions must be indicated in the procurement documents for the framework agreement);

- (b) where the framework agreement sets out all the terms governing the provision of the works, supplies or services concerned—
 - (i) partly without reopening competition in accordance with sub-paragraph (a); and
 - (ii) partly through reopening competition amongst the economic operators which are party to the framework agreement,

where this possibility has been stipulated by the contracting authority in the procurement documents for the framework agreement; or

- (c) where not all the terms governing the provision of the works, supplies or services are laid down in the framework agreement, through reopening competition amongst the economic operators which are parties to the framework agreement.

(8) For the purposes of paragraph (7)(b)—

- (a) the choice of whether specific works, supplies or services shall be acquired following reopening of competition or directly on the terms set out in the framework agreement must be made pursuant to objective criteria, which must be set out in the procurement documents for the framework agreement; and
- (b) those procurement documents must also specify which terms may be subject to reopening of competition.

(9) The possibilities provided for in paragraph (7)(b) must also apply to any lot of a framework agreement for which all the terms governing the provision of the works, supplies or services concerned are set out in the framework agreement, regardless of whether all the terms governing the provision of the works, supplies or services concerned under other lots have been set out.

(10) The competition referred to in paragraph (7)(b) and (c) must be based on the same terms as applied for the award of the framework agreement and, where necessary, more precisely formulated terms and, where appropriate, other terms referred to in the procurement documents for the framework agreement, in accordance with the following procedure—

- (a) for every contract to be awarded, a contracting authority must consult in writing the economic operators capable of performing the contract;
- (b) a contracting authority must fix a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject-matter of the contract and the time needed to send in tenders;
- (c) a contracting authority must require tenders to be submitted in writing and must not open the tenders until the stipulated time limit for reply has expired; and
- (d) a contracting authority must award each contract to the tenderer that has submitted the most economically advantageous tender on the basis of the award criteria set out in the procurement documents for the framework agreement.