
STATUTORY INSTRUMENTS

1991 No. 2679

The Public Supply Contracts Regulations 1991

PART III

PROCEDURES LEADING TO THE AWARD OF A PUBLIC SUPPLY CONTRACT

Annual notice of expected public supply contracts

9. –

(1) Subject to paragraph (2) below, a GATT contracting authority shall, as soon as possible after the commencement of each of its financial years, send to the Official Journal a notice in a form substantially corresponding to that set out in Part A of Schedule 3 and containing the information therein specified in respect of the public supply contracts in relation to which it expects to seek offers leading to an award during that financial year.

(2) The obligation under paragraph (1) above shall apply only to those public supply contracts which are for the purchase or hire of goods of a type which the contracting authority expects at the date of despatch of the notice to purchase or hire under public supply contracts which have an estimated value (within the meaning of regulation 7) which in aggregate for that type of goods is, or is more than, 750,000 ECU.

Selection of contract award procedure

10. –

(1) For the purposes of seeking offers in relation to a proposed public supply contract a contracting authority shall use the open procedure, the restricted procedure or the negotiated procedure and shall decide which of those procedures to use in accordance with the following paragraphs of this regulation.

(2) A contracting authority may use the restricted procedure when to do so is justified by the circumstances, such as—

- (a) when the cost of using the open procedure would be disproportionate to the value of the goods to be purchased or hired under the contract;
- (b) the nature of the goods to be purchased or hired under the contract.

(3) A contracting authority may use the negotiated procedure in the following circumstances—

- (a) subject to paragraph (4) below, in the event that the procedure leading to the award of a public supply contract by the contracting authority using the open or restricted procedure was discontinued—
 - (i) because of irregular tenders, or
 - (ii) following an evaluation made in accordance with regulation 11(6) or 12(4);

and without prejudice to the generality of the meaning of the words “irregular tenders” a tender may be considered irregular if the supplier fails to meet the requirements of, or the tender offers variations on the requirements specified in, the contract documents where

this is not permitted under the terms of the invitation to tender, or the goods offered do not meet the technical specifications (within the meaning of regulation 8(1)) of the contracting authority;

- (b) subject to paragraph (4), below, in the absence of tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;
- (c) when the goods to be purchased or hired under the contract are to be manufactured purely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs;
- (d) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods to be purchased or hired under the contract may only be manufactured or supplied by a particular person;
- (e) when (but only if it is strictly necessary), for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedures are used cannot be met; and
- (f) subject to paragraph (5) below, when the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or addition to, existing goods or an installation and when to obtain the goods from a person other than the person who supplied the existing goods or the installation would oblige the contracting authority to acquire goods having different technical characteristics which would result in—
 - (i) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract, or
 - (ii) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation.

(4) A contracting authority shall not use the negotiated procedure pursuant to paragraphs (3)(a) or (b) above unless the proposed terms of the contract are substantially unaltered from the proposed terms of the contract in relation to which offers were sought using the open or restricted procedure.

(5) A contracting authority shall not use the negotiated procedure pursuant to paragraph (3)(f) above 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.

(6) In all other circumstances the contracting authority shall use the open procedure.

(7) A contracting authority using the negotiated procedure pursuant to paragraph (3)(b) above shall submit a report recording the fact that it has done so to the Treasury for onward transmission to the Commission.

(8) A contracting authority using the negotiated or restricted procedure shall prepare a record in relation to the contract justifying the use of the procedure applied and specifying—

- (a) the name and address of the contracting authority;
- (b) the value, quantity and type of the goods to be purchased or hired under the contract;
- (c) the number of persons who asked to be selected to tender for or to negotiate the contract;
- (d) the number of persons selected to tender for or to negotiate the contract;
- (e) the number of persons, if any, who, having sought to be selected to tender or to negotiate, were not so selected and the reasons for not selecting them; and
- (f) in the case of a contracting authority using the negotiated procedure, which of the circumstances specified in paragraph (3) above constituted the grounds for using that procedure.

(9) If the Commission requests a report justifying the use of the negotiated or restricted procedure, the contracting authority shall send a written report containing the information specified in paragraph (8) above to the Treasury for onward transmission to the Commission.

The open procedure

11. –

(1) A contracting authority using the open procedure shall comply with the following paragraphs of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part B of Schedule 3, inviting tenders and containing the information therein specified in relation to the contract.

(3) The date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the contract notice shall be specified in the notice and shall be not less than 52 days from the date of despatch of the notice but, if it is necessary that suppliers be given the opportunity to inspect the premises at which the goods are to be used or documents relating to the contract documents, then that minimum period shall be extended to allow for such inspection.

(4) The contracting authority shall send the contract documents within 4 working days of the receipt of a request from any supplier provided that the documents are requested by the date specified in the contract notice and any fee specified in the notice has accompanied the request.

(5) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a supplier provided that the request is received in sufficient time to enable the contracting authority to supply the information no later than 6 days before the date specified in the contract notice as the final date for the receipt of tenders.

(6) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 20 only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

The restricted procedure

12. –

(1) A contracting authority using the restricted procedure shall comply with the following paragraphs of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part C of Schedule 3, inviting requests to be selected to tender and containing the information therein specified in relation to the contract.

(3) Subject to paragraph (9) below, the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to tender shall be specified in the contract notice and shall be not less than 37 days from the date of the despatch of the notice.

(4) The contracting authority may exclude a supplier from those persons from whom it will make the selection of the persons to be invited to tender only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(5) The contracting authority shall make the selection of the suppliers to be invited to tender in accordance with regulations 14, 15, 16 and 17; and in making the selection and in issuing invitations the contracting authority shall not discriminate between suppliers on the grounds of their nationality or the member State in which they are established.

(6) The invitation to tender may be sent by letter, telegram, telex, facsimile or telephone but, in the last 4 cases, it shall be confirmed by letter and the letter of invitation shall be sent simultaneously to each supplier selected to tender together with the contract documents.

(7) Subject to paragraph (9) below, the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the invitation to tender shall be specified in the invitation to tender and shall be not less than 40 days from the despatch of the invitation but, if it is necessary that suppliers be given the opportunity to inspect the premises at which the goods are to be used or documents relating to the contract documents, then that minimum period shall be extended to allow for such inspection.

(8) Subject to paragraph (9) below, the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a supplier selected to tender provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 6 days before the date specified in the invitation to tender as the final date for the receipt of tenders.

(9) Where compliance with the minimum periods referred to in paragraphs (3), (7) and (8) above is rendered impracticable for reasons of urgency, the contracting authority may substitute for the periods specified in those paragraphs periods of not less than 15 days, 10 days and 4 days respectively and, in those circumstances, the contracting authority shall send the invitation to tender by the most rapid means possible.

(10) A contracting authority shall not refuse to consider an application to be invited to tender if it is made by letter, telegram, telex or telephone provided that, in the last three cases, it is confirmed by letter without delay.

The negotiated procedure

13. –

(1) A contracting authority using the negotiated procedure shall comply with the following paragraphs of this regulation except that–

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(3)(b), (c), (d), (e) or (f), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(3)(a) who invites to negotiate the contract every supplier who submitted a tender following an invitation made during the course of the discontinued open or restricted procedure (not being a tender which was excluded pursuant to regulation 11(6)),

need not comply with paragraphs (2) to (6) below.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in part D of Schedule 3, inviting requests to be selected to negotiate and containing the information therein specified in relation to the contract.

(3) Subject to paragraph (4) below, the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to negotiate shall be specified in paragraph 6(a) of the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(4) Where compliance with the minimum period of 37 days in paragraph (3) above is rendered impracticable for reasons of urgency, the contracting authority may substitute a period of not less than

15 days and, in those circumstances, the contracting authority must send the invitation to negotiate the contract by the most rapid means possible.

(5) A contracting authority shall not refuse to consider an application to be selected to negotiate if it is made by letter, telegram, telex or telephone provided that, in the last three cases, it is confirmed by letter without delay.

(6) The invitation to negotiate the contract may be sent by letter, telegram, telex, facsimile or telephone but, in the last 4 cases, it shall be confirmed by letter and the letter of invitation shall be sent simultaneously to each supplier selected to negotiate together with the contract documents.

(7) The contracting authority may exclude a supplier from those persons from whom it will make the selection of persons to be invited to negotiate the contract only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(8) The contracting authority may negotiate the terms of the public supply contract with one or more persons and shall make the selection of the suppliers to be invited to negotiate in accordance with regulations 14, 15, 16 and 17; and in making the selection and in issuing the invitation to negotiate the contracting authority shall not discriminate between suppliers on the grounds of their nationality or the member State in which they are established.