
STATUTORY INSTRUMENTS

1991 No. 2680

The Public Works Contracts Regulations 1991

PART VI

MISCELLANEOUS

Subsidised works contracts

23. –

(1) Where a contracting authority undertakes to contribute more than half of the consideration to be or expected to be paid under a contract to which this paragraph applies by virtue of paragraph (2) below which has been or is to be entered into by a person other than another contracting authority (in this paragraph referred to as “the subsidised body”), that contracting authority shall—

- (a) make it a condition of the making of such contribution that the subsidised body complies with the provisions of these Regulations in relation to that contract as if it were a contracting authority, and
- (b) ensure that the subsidised body does so comply or recover the contribution.

(2) Paragraph (1) above applies to a contract which would be a public works contract if the subsidised body were a contracting authority and which is for the carrying out of any of the activities specified in Schedule 1 as are included in Group 502 or for the carrying out of building work for hospitals, facilities intended for sports, recreation and leisure, school and university building or buildings for administrative purposes.

Public housing scheme works contracts

24. –

(1) For the purpose of seeking offers in relation to a public housing scheme works contract, where the size and complexity of the scheme and the estimated duration of the works involved require that the planning of the scheme be based from the outset on a close collaboration of a team comprising representatives of the contracting authority, experts and the contractor, a contracting authority may, except as indicated in the following paragraphs, depart from the provisions of these Regulations insofar as it is necessary to do so to select the contractor who is most suitable for integration into the team.

(2) The contracting authority shall comply with the provisions of regulation 12(1) to (5).

(3) The contracting authority shall include in the contract notice a job description which is as accurate as possible so as to enable contractors to form a valid idea of the scheme and of the minimum standards relating to the business or professional status, the economic and financial standing and the technical capacity which the person awarded the contract will be expected to fulfil.

Public works concession contracts

25. –

(1) A contracting authority seeking offers in relation to a public works concession contract shall comply with the following paragraphs of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the concession 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 F of Schedule 2 and containing the information therein specified in relation to the concession contract.

(3) The date which the contracting authority shall fix as the last date for the receipt by it of tenders or of requests to be selected to tender for or negotiate the contract, as the case may be, shall be specified in paragraph 3(a) of the notice and shall be not less than 52 days from the date of despatch of the notice.

Sub-contracting the work or works to be carried out under a public works concession contract

26. –

(1) A contracting authority seeking offers in relation to a public works concession contract shall either–

- (a) include in the invitation to tender for, or to apply to be selected to tender for or to negotiate, the concession contract a request that the applicant specify whether he would intend, if awarded the concession contract, to sub-contract to persons who are not affiliated to him any of the work or works to be carried out under the concession contract and, if so, how much as a proportion of the value of such work or works would be so sub-contracted, or
- (b) require as a term of the concession contract–
 - (i) that the concessionaire sub-contract to persons who are not affiliated to the concessionaire some or all of the work or works to be carried out under the concession contract, and
 - (ii) that the amount of the works so sub-contracted be not less than 30%, or such higher percentage as may be specified in the contract at the option of the contracting authority or the concessionaire, of the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not grant a concession.

(2) Where the concessionaire is a contracting authority that contracting authority shall comply with the provisions of these Regulations in respect of public works contracts it seeks offers in relation to for the purpose of sub-contracting the work or works to be carried out under the public works concession contract.

(3) Where the concessionaire is not a contracting authority the concessionaire shall–

- (a) publicise his intention to seek offers in relation to any contract to which this paragraph applies by virtue of paragraph (4) below 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 G of Schedule 2 and containing the information therein specified in relation to the contract;
- (b) comply with regulation 30 in relation to that notice as if the concessionaire were a contracting authority;
- (c) if that notice invites tenders, fix as the last date for the receipt by the concessionaire of tenders a date of not less than 40 days from the date of the despatch of the notice and specify that date in paragraph 4(a) of the notice; and
- (d) if the notice invites applications to be selected to tender for or negotiate the contract–

- (i) fix as the last date for the receipt of such applications a date not less than 37 days from the date of despatch of the notice and specify that date in paragraph 4(a) of the notice; and
 - (ii) fix as the last date for the receipt of tenders following selection of the persons to be invited to tender a date of not less than 40 days from the date of despatch of the invitation and specify that date in the invitation.
- (4) Paragraph (3) above applies to a contract—
- (a) in relation to which the concessionaire is seeking offers for the purpose of sub-contracting any of the work or works to be carried out under the public works concession contract,
 - (b) which the concessionaire does not intend to enter into with a person affiliated to him,
 - (c) which would, if the concessionaire were a contracting authority, be a public works contract other than a public works contract in respect of which a contracting authority would be entitled to use the negotiated procedure pursuant to regulation 10(2)(d) to (h).
- (5) For the purposes of this regulation a person is to be treated as affiliated to another person if either exercises, directly or indirectly, a dominant influence over the other or any person exercises, directly or indirectly, a dominant influence over both of them or if they are both members of any consortium formed for the purpose of performing the public works concession contract; and a person shall be taken to exercise a dominant influence over another person—
- (a) if he possesses the greater part of the issued share capital of that person or controls the voting power attached to such greater part, or
 - (b) if he may appoint more than half of the individuals who are ultimately responsible for managing that person's affairs.
- (6) A contracting authority shall require applicants for a public works concession contract to submit a list of all persons affiliated to the applicant with the application and to update that list from time to time to take account of any changes in the persons affiliated to the applicant.

Obligations relating to employment protection and working conditions

27. A contracting authority which includes in the contract documents relating to a public works contract information as to where a contractor may obtain information about obligations relating to employment protection and working conditions which will apply to the works to be carried out under the contract, shall request contractors to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

Statistical and other reports

28. —

- (1) A contracting authority shall, no later than 31st July 1993 and 31st July in each alternate year thereafter, send to the Treasury a report specifying in relation to each public works contract awarded by it during the year preceding the year in which the report is made—
- (a) the value (estimated if necessary) of the consideration payable under the contract;
 - (b) whether the open, restricted or negotiated procedure was used in awarding the contract;
 - (c) if the negotiated procedure was used, pursuant to which provision of regulation 10(2) that procedure was used;
 - (d) the principal category of works carried or to be carried out under the contract; and
 - (e) the nationality of the person to whom the contract was awarded.

(2) A contracting authority shall send to the Treasury a report containing such other information as the Treasury may from time to time require in respect of a particular public works contract (including public works contracts excluded from the application of these Regulations by regulations 6 and 7) for the purpose of informing the Commission.

Responsibility for obtaining reports

29. –

(1) Where a contracting authority is not a Minister of the Crown or a government department, that contracting authority shall send any report which it is required in accordance with regulations 8(6), 10(7), 20(7), 22(3) and 28 to send to the Treasury instead to the Minister responsible for that contracting authority and that Minister shall be responsible for sending the report to the Treasury.

(2) The Minister responsible for a contracting authority shall be the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the contracting authority; and any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a contracting authority shall be determined by the Treasury whose determination shall be final.

(3) The requirement on a contracting authority to send any report in accordance with paragraph (1) above to the Minister of the Crown responsible for that contracting authority shall be enforceable, on the application of the Minister responsible, by mandamus or, in Scotland, for an order for specific performance.

(4) Proceedings under paragraph (3) above brought in Scotland shall be brought before the Court of Session.

(5) In the application of this regulation to Northern Ireland references to the Minister shall include references to the head of a Northern Ireland department.

Publication of notices

30. –

(1) Any notice required by these Regulations to be sent to the Official Journal shall be sent by the most appropriate means to the Office for Official Publications of the European Communities⁽¹⁾ and where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulations 12(14) and 13(4), the notice shall be sent by telex, telegram or telefax.

(2) Any such notice shall not contain more than 650 words.

(3) The contracting authority shall retain evidence of the date of despatch to the Official Journal of each notice.

(4) The contracting authority shall not place a contract notice in the press or like publications in the United Kingdom before the date on which the notice is despatched in accordance with paragraph (1) above and if it does after that date, so place the notice it shall not add to the notice any information in relation to the contract which was not contained in the notice sent to the Official Journal.

(1) The address for the Office for Official Publications of the European Communities is 2 Rue Mercier, 2985, Luxembourg (tel: 499 28-1, telex: 1324 pubof lu, fax: 49 00 03, 49 57 19).