
STATUTORY INSTRUMENTS

1995 No. 201

The Public Supply Contracts Regulations 1995

PART III

PROCEDURES LEADING TO THE AWARD OF A PUBLIC SUPPLY CONTRACT

Prior Information Notices

9.—(1) Subject to paragraph (2) below, a 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 and the notice shall be subdivided to give that information separately for each product area⁽¹⁾.

(2) The obligation under paragraph (1) above shall only apply—

- (a) to proposed public supply contracts which are not excluded from the application of these Regulations by virtue of regulation 6 or 7; and
- (b) where, at the date of despatch of the notice, the total consideration which the contracting authority expects to give under all the proposed public supply contracts which are for the purchase or hire of goods falling within the same product area equals or exceeds 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 negotiated procedure in the following circumstances—

- (a) subject to paragraph (3) 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(7) 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

(1) The relevant classification for product area shall be defined by reference to the Classification of Products by Activity as determined by the Commission in consultation with member States and published from time to time in the Official Journal.

meet the technical specifications (within the meaning of regulation 8(1)) of the contracting authority;

- (b) subject to paragraphs (3) and (6) below, in the absence of tenders or of appropriate 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, and not attributable to, the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedure is used, or the time limits specified in regulation 13 if the negotiated procedure is used pursuant to subparagraph (a) above, cannot be met; and
- (f) subject to paragraph (4) 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.

(3) A contracting authority shall not use the negotiated procedure pursuant to paragraphs (2)(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.

(4) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(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.

(5) In all other circumstances the contracting authority shall use the open or restricted procedure.

(6) A contracting authority using the negotiated procedure pursuant to paragraph (2)(b) above shall submit a report recording the fact that it has done so 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.

(3) Subject to paragraph (6) 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 contract notice shall be specified in the notice and shall be not less than 52 days from the date of despatch of the notice.

(4) The contracting authority shall send the contract documents within 6 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) If the contract documents are too bulky to be supplied within the periods referred to in paragraphs (4) and (5) above or 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 the minimum period laid down in paragraph (3) above shall be extended to allow for such supply or inspection.

(7) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 21 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.

(3) Subject to paragraph (14) 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 not be 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 relevant State in which they are established.

(6) The contracting authority may predetermine the range within which the number of persons which it intends to invite to tender for the contract shall be fixed but only if—

- (a) the lower number of the range is not less than 5 and the higher number not more than 20;
- (b) the range is determined in the light of the nature of the goods to be purchased or hired under the contract, and
- (c) the range is specified in the contract notice.

(7) In any event, the number of persons invited to tender shall be sufficient to ensure genuine competition.

(8) The contracting authority shall send invitations to each of the suppliers selected to tender and the invitation shall be accompanied by the contract documents, or the invitation shall state the address for requesting them.

(9) The invitation to tender shall be sent in writing simultaneously to each supplier selected to tender.

(10) The following information shall be included in the invitation—

- (a) the address to which requests for the contract documents (if not accompanying the invitation) and further information relating to those documents should be sent, the final date for making such a request and the amount and terms of the fee which may be charged for supplying that material;
- (b) the final date for the receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published in accordance with paragraph (2) above;
- (d) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with regulations 15, 16 and 17; and
- (e) the criteria for the award of the contract if this information was not specified in the contract notice published in accordance with paragraph (2) above.

(11) Subject to paragraph (14) 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 which shall be specified in the invitation to tender in accordance with paragraph (10)(b) above shall be not less than 40 days from the despatch of the invitation.

(12) If it is necessary that suppliers should be given the opportunity to inspect the premises at which the goods are to be used or documents relating to the contract documents, then the minimum period referred to in paragraph (11) above shall be extended to allow for such inspection.

(13) Subject to paragraph (14) 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.

(14) Where compliance with the minimum periods referred to in paragraphs (3), (11) and (13) 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.

(15) A contracting authority shall not refuse to consider an application to be invited to tender if it is made by letter, telegram, telex, facsimile or telephone provided that, in the last four cases, it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of applications to be invited to tender for the contract.

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(2)(b), (c), (d), (e) or (f), and

(b) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(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(7) or 12(4)), 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.

(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 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 shall 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, facsimile or telephone provided that, in the last four cases, it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of applications to be invited to tender for the contract.

(6) Where there is a sufficient number of persons who are suitable to be selected to negotiate the contract, the number selected to negotiate shall not be less than 3.

(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 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 invitations to negotiate the contracting authority shall not discriminate between suppliers on the grounds of their nationality or the relevant State in which they are established.