
STATUTORY INSTRUMENTS

1995 No. 201

The Public Supply Contracts Regulations 1995

PART V

THE AWARD OF A PUBLIC SUPPLY CONTRACT

Criteria for the Award of a Public Supply Contract

21.—(1) Subject to paragraphs (5), (6) and (7) below, a contracting authority shall award a public supply contract on the basis of the offer which—

- (a) is the most economically advantageous to the contracting authority, or
- (b) offers the lowest price.

(2) The criteria which a contracting authority may use to determine that an offer is the most economically advantageous include delivery date, running costs, cost effectiveness, quality, aesthetic and functional characteristics, technical merit, after sales service, technical assistance and price.

(3) Where a contracting authority intends to award a public supply contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in the contract notice or in the contract documents.

(4) Where a contracting authority awards a public supply contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if—

- (a) the offer meets the minimum requirements of the contracting authority, and
- (b) it has stated those minimum requirements and any specific requirements for the presentation of an offer offering variations in the contract documents,

but if the contracting authority shall not take account of offers which offer such variations it shall state that fact in the contract notice.

(5) A contracting authority may not reject an offer which offers variations on the requirements specified in the contract documents on the ground that it would lead to the award of a public services contract within the meaning of the Public Services Contracts Regulations 1993⁽¹⁾.

(6) A contracting authority may not reject an offer on the ground that the technical specifications in the offer have been defined by reference to European specifications (within the meaning of regulation 8(1)) or to the British technical specifications specified in regulation 8(7)(a) and (b).

(7) If an offer for a public supply contract is abnormally low the contracting authority may reject that offer but only if it has requested in writing an explanation of the offer, or of those parts which it considers contribute to the offer being abnormally low, and has—

- (a) if awarding the public supply contract on the basis of the offer which offers the lowest price, examined the details of all the offers made, taking into account any explanation given to it of the abnormally low tender, before awarding the contract, or

(1) S.I.1993/3228.

- (b) if awarding the public supply contract on the basis of the offer which is the most economically advantageous, taken any such explanation into account in assessing which is the most economically advantageous offer,

and, in considering that explanation, the contracting authority may take into account explanations relating to the economics of the manufacturing process, or to the technical solutions suggested by the supplier or the exceptionally favourable conditions available to the supplier for the provision of the supply of goods or the originality of the supplies proposed by the supplier.

(8) If a contracting authority which rejects an abnormally low offer is awarding the public supply contract on the basis of the offer which offers the lowest price, it shall send a report justifying the rejection to the Treasury for onward transmission to the Commission.

(9) For the purposes of this regulation an “offer” includes a bid by one part of a contracting authority to make available to another part of the contracting authority the goods required by it when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice

22.—(1) A contracting authority which has awarded a public supply contract shall, no later than 48 days after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part E of Schedule 3 and, subject to paragraph (2) below, including the information therein specified.

(2) Any of the information specified in Part E of Schedule 3 to be included in the contract award notice may be omitted in a particular case where to publish such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of any person or might prejudice fair competition between suppliers.

Information about contract award procedures

23.—(1) A contracting authority shall, within 15 days of the date on which it receives a request from any supplier who was unsuccessful (whether pursuant to regulation 11(7), 12(4), 12(5), 13(7), 13(8) or 21), inform that supplier of the reasons why he was unsuccessful and, if the supplier was unsuccessful as a result of the evaluation of offers made in accordance with regulation 21, the name of the person awarded the contract.

(2) A contracting authority shall prepare a record in relation to each public supply contract awarded by it specifying—

- (a) the name and address of the contracting authority;
- (b) the type of goods purchased or hired or to be purchased or hired under the contract and the value of the consideration to be given under it;
- (c) the names of the persons whose offers were evaluated in accordance with regulation 21 and, where the contracting authority has used the restricted or negotiated procedure, the reasons why those persons were selected;
- (d) the names of the persons who were unsuccessful pursuant to regulation 11(7), 12(4), 12(5), 13(7) or 13(8) and the reasons why they were unsuccessful;
- (e) the name of the person to whom the public supply contract was awarded and the reasons for having awarded the contract to him;
- (f) if known to the contracting authority, which part of the contract the person to whom the public supply contract has been awarded intends to sub-contract to another person;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 10(2) constituted grounds for using that procedure.

(3) If the Commission requests a report containing the information specified in paragraph (2) above, the contracting authority shall send a written report containing that information, or the main features of it, to the Treasury for onward transmission to the Commission.

(4) Where a contracting authority decides not to award a public supply contract in respect of which a contract notice was published nor to seek offers in relation to another contract for the same purpose it shall inform the Official Journal of that decision and shall, if so requested by any supplier who submitted an offer or who applied to be included amongst the persons to be selected to tender for or to negotiate the contract, inform him of the reasons for its decision.