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SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 446**

**The Public Contracts (Scotland) Regulations 2015**

**PART 2**

**RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE**

**CHAPTER 3**

**PARTICULAR PROCUREMENT REGIMES**

*SECTION 7*

*Social and Other Specific Services*

**Award of contracts for social and other specific services**

**74.** A public contract or framework for social and other specific services listed in Schedule 3 must be awarded in accordance with this Section, where the value of the contract or framework is equal to or greater than the threshold indicated in regulation 5(1)(d) (thresholds).

**Publication of notices**

**75.—(1)** A contracting authority intending to award a public contract or framework for the services referred to in regulation 74 (award of contracts for social and other specific services) must make known its intention by means of—

- (a) a contract notice, which must contain the information set out in Part H of Annex V to the Directive; or
- (b) a prior information notice, which must—
  - (i) be published continuously;
  - (ii) contain the information set out Part I of Annex V to the Directive;
  - (iii) refer specifically to the types of services that will be the subject of the contract or framework to be awarded; and
  - (iv) indicate that the contract or framework will be awarded without further publication and invite interested economic operators to express their interest in writing.

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could have been used in accordance with regulation 33 (use of the negotiated procedure without prior publication) for the award of the contract.

(3) A contracting authority that has awarded a contract or framework for the services referred to in regulation 74 (award of contracts for social and other specific services) must make known the results of the procurement procedure by means of a contract award notice, which must contain the information referred to in Part J of Annex V to the Directive.

**Status:** Point in time view as at 31/12/2020.

**Changes to legislation:** The Public Contracts (Scotland) Regulations 2015, CHAPTER 3 is up to date with all changes known to be in force on or before 24 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

(4) A contracting authority may, however, group notices referred to in paragraph (3) on a quarterly basis, in which case it must [<sup>F1</sup>submit] the grouped notices within 30 days of the end of each quarter.

(5) A contracting authority must [<sup>F2</sup>submit] the notices, referred to in this regulation, for publication in accordance with regulation 52 ([<sup>F3</sup>publication on the UK e-notification service]).

#### Textual Amendments

- F1** Word in reg. 75(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(52)(a) (with sch. paras. 1-5)
- F2** Word in reg. 75(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(52)(b)(i) (with sch. paras. 1-5)
- F3** Words in reg. 75(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(52)(b)(ii) (with sch. paras. 1-5)

#### Principles of awarding contracts

76.—(1) A contracting authority must determine the procedure that is to be applied in connection with the award of a contract or framework subject to this Section and may take into account—

- (a) the specificities of the services in question; and
- (b) the requirements and needs of users.

(2) The procedure must be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) The procedure must provide for the exclusion from participation in the procurement of any economic operator in relation to which mandatory exclusion referred to in regulation 58(1) and (3) (exclusion grounds) applies and the contracting authority must not award a contract or framework agreement to such economic operator.

(4) In particular, where, in accordance with regulation 75 (publication of notices), a contract notice or prior information notice has been published in relation to a procurement, the contracting authority must, except in the circumstances mentioned in paragraph (5), conduct that procurement, and award any resulting contract, in conformity with the information contained in the notice about—

- (a) conditions for participation;
- (b) time limits for contacting the contracting authority; and
- (c) the award procedure to be applied.

(5) The contracting authority may, however, conduct the procurement, and award any resulting contract, in a way which is not in conformity with that information, but only if all of the following conditions are met—

- (a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;
- (b) the contracting authority has—
  - (i) after giving due consideration to the matter, concluded that sub-paragraph (a) is applicable;
  - (ii) documented that conclusion and the reasons for it in accordance with regulation 83(7) and (8) (reporting and documentation requirements); and
  - (iii) informed the participants of the respects in which the contracting authority intends to proceed in a way which is not in accordance with the information contained in the notice.

(6) In paragraph (5)(b)(iii), “participants” means any economic operators which have responded to the notice and not been informed by the contracting authority that they are no longer under consideration for the award of a contract within the scope of the procurement concerned.

(7) All time limits imposed upon economic operators for the purposes of this regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, must be reasonable and proportionate having regard to the nature of the requirement and the needs of service users.

(8) Without prejudice to the generality of paragraph (1), a contracting authority may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features otherwise provided for in these Regulations, as well as procedures which do not.

(9) In relation to the award of contracts subject to this regulation, a contracting authority may take into account—

- (a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- (b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- (c) the involvement and empowerment of users;
- (d) innovation; and
- (e) any other relevant consideration.

(10) A contracting authority must award a contract or framework for services listed in Schedule 3 on the basis of the tender representing the best price quality ratio, taking into account quality and sustainability criteria for such services.

## *SECTION 8*

### *Rules Governing Design Contests*

#### **Scope of Section 8**

77.—(1) This Section applies to—

- (a) design contests organised as part of a procedure leading to the award of a public service contract;
- (b) design contests with prizes or payments to participants.

(2) In the cases referred to in paragraph (1)(a), the threshold referred to in regulation 5 (thresholds) is calculated on the basis of the estimated value net of VAT of the public service contract, including any possible prizes or payments to participants.

(3) In the cases referred to in paragraph (1)(b), the threshold referred to in regulation 5 (thresholds) is calculated on the basis of the total amount of the prizes and payments, including the estimated value net of VAT of the public services contract which might subsequently be concluded following a negotiated procedure without prior publication in accordance with regulation 33(6) and (7) (use of the negotiated procedure without prior publication) if the contracting authority has announced its intention to award such a contract in the contest notice.

#### **Notices**

78.—(1) A contracting authority that intends to carry out a design contest must make known its intention by means of a contest notice which includes the information set out in Part E of Annex V to the Directive [F4], but as if—

**Status:** Point in time view as at 31/12/2020.

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- (a) in paragraph 2, “the second and third sub-paragraphs of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations,
  - (b) in paragraph 16, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations].
- (2) Where a contracting authority intends to award a subsequent service contract under regulation 33(6) (use of the negotiated procedure without prior publication), this must be indicated in the contest notice.
- (3) The contracting authority must [<sup>F5</sup>submit] the contest notice for publication in accordance with regulation 52 ([<sup>F6</sup>publication on the UK e-notification service]).
- (4) A contracting authority that has held a design contest must—
- (a) [<sup>F7</sup>submit] a notice of the results of the contest for publication in accordance with regulation 52 ([<sup>F8</sup>publication on the UK e-notification service]); and
  - (b) be able to prove the date [<sup>F9</sup>on which the notice was submitted to the UK e-notification service].
- (5) The notice of the results of the contest must include the information set out in Part F of Annex V to the Directive [<sup>F10</sup>, but as if—
- (a) paragraph 12 (financing by EU funds) were omitted,
  - (b) in paragraph 13, “in the *Official Journal of the European Union* “ read “on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015”, and
  - (c) in paragraph 14, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations].
- (6) A contracting authority may withhold from publication information on the result of the contest where the release of the information—
- (a) would impede law enforcement or otherwise be contrary to the public interest;
  - (b) would prejudice the commercial interests of any person; or
  - (c) might prejudice fair competition between economic operators.

#### Textual Amendments

- F4** Reg. 78(1)(a)(b) and words inserted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(a\)](#) (with sch. paras. 1-5)
- F5** Word in reg. 78(3) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(b\)\(i\)](#) (with sch. paras. 1-5)
- F6** Words in reg. 78(3) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(b\)\(ii\)](#) (with sch. paras. 1-5)
- F7** Word in reg. 78(4)(a) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(c\)\(i\)\(aa\)](#) (with sch. paras. 1-5)
- F8** Words in reg. 78(4)(a) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(c\)\(i\)\(bb\)](#) (with sch. paras. 1-5)
- F9** Words in reg. 78(4)(b) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(c\)\(ii\)](#) (with sch. paras. 1-5)
- F10** Reg. 78(5)(a)-(c) and words inserted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(53\)\(d\)](#) (with sch. paras. 1-5)

## Rules on the organisation of design contests and the selection of participants

**79.**—(1) When organising a design contest, a contracting authority must apply procedures which are adapted to the provisions of Chapter 1 and this Section.

<sup>F11</sup>(2) .....

(3) Where a design contest is restricted to a limited number of participants, the contracting authority must—

- (a) lay down clear and non-discriminatory selection criteria; and
- (b) ensure that the number of candidates invited to participate is sufficient to ensure genuine competition in so far as there are enough qualified candidates.

### Textual Amendments

**F11** Reg. 79(2) omitted (31.12.2020) by virtue of [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(54)** (with sch. paras. 1-5)

### Modifications etc. (not altering text)

**C1** Reg. 79 modified by SSI 2013/50, Sch. 3 para. 10(2)(a) (as substituted (18.4.2016) by [The Utilities Contracts \(Scotland\) Regulations 2016 \(S.S.I. 2016/49\)](#), reg. 1, **sch. 3 para. 3(2)(c)**)

## Appointment and composition of the jury

**80.**—(1) A contracting authority must appoint a jury which must be composed exclusively of natural persons who are independent of participants in the contest.

(2) Where a particular professional qualification is required from participants in a contest, at least a third of the members of the jury must have that qualification or an equivalent qualification.

## Decisions of the jury

**81.**—(1) The jury must be autonomous in its decisions and opinions.

(2) The jury must examine the plans and projects submitted by the candidates anonymously and solely on the basis of the criteria indicated in the contest notice.

(3) The jury must record its ranking of projects in a report, signed by its members, made according to the merits of each project, together with its remarks and any points that may need clarification.

(4) Anonymity must be observed until the jury has reached its opinion or decision.

(5) Candidates may be invited, if need be, to answer questions that the jury has recorded in the minutes to clarify any aspect of the projects.

(6) Complete minutes must be recorded of the dialogue between jury members and candidates.

**Status:**

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