



# Procurement Reform (Scotland) Act 2014

## 2014 asp 12

### PART 3

#### SPECIFIC DUTIES

##### *Giving of reasons*

#### **32 Giving of reasons to unsuccessful participants**

- (1) This section applies to a regulated procurement (other than an EU-regulated procurement).
- (2) A contracting authority must, as soon as reasonably practicable after deciding to exclude an economic operator from participating in the procurement process at any stage before the economic operator has submitted a tender, notify its decision to the economic operator.
- (3) A notice under subsection (2) must include the following information—
  - (a) the names of the economic operators who have not been so excluded,
  - (b) the criteria used to exclude the economic operator in question,
  - (c) the contracting authority's scoring (if any), against those criteria, of the economic operator.
- (4) A contracting authority must, as soon as reasonably practicable after deciding to award a contract, notify its decision to all unsuccessful tenderers.
- (5) A notice under subsection (4) must include the following information—
  - (a) the name of the successful tenderer,
  - (b) the criteria used to award the contract,
  - (c) the contracting authority's scoring, against those criteria, of the unsuccessful tenderer and the successful tenderer.

#### **33 Request for further information**

- (1) The following persons may request further information in relation to a regulated procurement (other than an EU-regulated procurement)—

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*Status: This is the original version (as it was originally enacted).*

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- (a) an economic operator who was excluded from participating in the procurement process before it submitted a tender,
  - (b) an unsuccessful tenderer,
  - (c) the successful tenderer.
- (2) The request must be—
- (a) in writing, and
  - (b) made before the end of the period of 30 days beginning on—
    - (i) in the case of a person mentioned in subsection (1)(a) or (b), the day the person received a notice under section 32,
    - (ii) in the case of the successful tenderer, the day on which it was notified of the decision to award the contract.
- (3) The contracting authority must, before the end of the period of 30 days beginning on the day it receives the request, provide the relevant information.
- (4) The relevant information is—
- (a) in the case of an economic operator excluded from the participating in the procurement process, a summary of the reasons why the economic operator was excluded,
  - (b) in the case of an unsuccessful tenderer—
    - (i) a summary of the reasons why the tenderer was unsuccessful, and
    - (ii) the characteristics and relative advantages of the successful tender,
  - (c) in the case of the successful tenderer, a description of any improvements the contracting authority considers the tenderer could have made to its tender.

### **34 Withholding information**

Despite sections 32 and 33, the contracting authority may withhold information from a person if it considers that disclosure would—

- (a) impede law enforcement or otherwise be contrary to the public interest,
- (b) prejudice the commercial interests of any person, or
- (c) prejudice fair competition between economic operators.