
STATUTORY INSTRUMENTS

1993 No. 3228

The Public Services Contracts Regulations 1993

PART III

**PROCEDURES LEADING TO THE AWARD
OF A PUBLIC SERVICES 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 2 and containing the information therein specified, in respect of the public services 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 category of services specified in Part A of Schedule 1.

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

- (a) to proposed Part A services 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 considerations which the contracting authority expects to give under all the proposed public services contracts for the provision of services falling within the same category specified in Part A of Schedule 1, 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 services 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 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(8) 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 services provider 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 services, materials or goods offered do not meet the technical specifications (within the meaning of regulation 8(1) above) of the contracting authority;

- (b) exceptionally, when the nature of the services to be provided, or the risks attaching thereto, are such as not to permit prior overall pricing;
 - (c) when the nature of the services to be provided, in particular in the case of intellectual services or services specified in category 6 of Part A of Schedule 1, is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure;
 - (d) subject to paragraph (3) 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;
 - (e) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services to be provided may only be provided by a particular person;
 - (f) when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;
 - (g) 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 paragraph (2)(a) to (c) above, cannot be met;
 - (h) subject to paragraph (4) below, when a contracting authority wants a person who has entered into a public services contract with the contracting authority to provide additional services which were not included in the project initially considered or in the original services contract but which through unforeseen circumstances have become necessary, and—
 - (i) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the contracting authority, or
 - (ii) such services can be provided separately from the services provided under the original contract but are strictly necessary to the performance of that contract; and
 - (i) subject to paragraph (5) below, when a contracting authority wishes a person who has entered into a public services contract with it to provide new services which are a repetition of services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.
- (3) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(a) or (d) 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)(h) above where the aggregate value of the consideration to be given under contracts for the additional services exceeds 50 per cent of the value of the consideration payable under the original contract; and, for the purposes of this paragraph, the value of the consideration shall be taken to include the estimated value of any goods which the contracting authority provided to the person awarded the contract for the purpose of carrying out the contract.
- (5) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(i) above unless the contract notice relating to the original contract stated that a services contract for new services which would be a repetition of the services provided under the original contract may be awarded using the negotiated procedure pursuant to paragraph (2)(i) above and unless the procedure for the award of the new contract is commenced within three years of the original contract being entered into.

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

(7) A contracting authority using the negotiated procedure pursuant to paragraph (2)(d) above shall, if the Commission requests it, 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 services 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 2, inviting tenders 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 tenders made in response to the contract notice shall be specified in the contract notice and shall be not less than 52 days from the date of despatch of the notice.

(4) Where the contracting authority has published a notice in accordance with regulation 9 above in relation to the category of services to be provided under the public services contract it may substitute for the period of not less than 52 days specified in paragraph (3) above a period of not less than 36 days.

(5) The contracting authority shall send the contract documents within 6 days of the receipt of a request from any services provider provided that the documents are requested in good time and any fee specified in the contract notice has accompanied the request.

(6) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a service provider 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.

(7) If the contract documents are too bulky to be supplied within the periods referred to in paragraphs (5) or (6) above or it is necessary that services providers be given the opportunity to inspect the site in relation to which the services are to be provided or documents relating to the contract documents, then the minimum periods referred to in paragraphs (3) and (4) above shall be extended to allow for such supply or inspection.

(8) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 21 only if the services provider may be treated as ineligible to tender on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers 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 services 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 2, inviting requests to be selected to tender and containing the information therein specified.

(3) Subject to paragraph (15) 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 services provider from those persons from whom it will make the selection of persons to be invited to tender only if the services provider may be treated as ineligible on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers 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 services providers 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 services providers on the grounds of their nationality or the member 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 services to be provided under the contract, and
- (c) the range is specified in the contract notice.

(7) 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 services providers 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 shall be sent in writing simultaneously to each services provider 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 paragraphs (12) and (15) 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 not be less than 40 days from the date of the despatch of the invitation.

(12) Subject to paragraph (15) below, where the contracting authority has published a notice in accordance with regulation 9 above in relation to the category of services to be provided under the public services contract, it may substitute for the period of not less than 40 days in paragraph (11) above a period of not less than 26 days.

(13) If it is necessary that services providers should be given the opportunity to inspect the site in relation to which the services under the contract are to be provided or documents relating to the

contract documents, then the minimum periods referred to in paragraphs (11) and (12) above shall be extended to allow for such inspection.

(14) Subject to paragraph (15) below, the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a services provider 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.

(15) Where compliance with the minimum periods referred to in paragraphs (3), (11), (12) and (14) above is rendered impracticable for reasons of urgency, the contracting authority may substitute for the period specified in paragraph (d) a period of not less than 15 days and for the period specified in paragraphs (11) and (12) periods of not less than 10 days and for the period specified in paragraph (14) a period of not less than 4 days and, in those circumstances, the contracting authority must send the invitation to tender by the most rapid means possible.

(16) A contracting authority shall not refuse to consider an application to be invited to tender for a contract if it is made by letter, telegram, telex, facsimile or telephone provided that, in the last 4 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 provisions of this regulation except that—

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(d) to (i), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(a) who invites to negotiate the contract every services provider 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(8) 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 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 2, 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 must send the invitation to negotiate the contract by the most rapid means possible.

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

(6) 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 by telephone provided that, in the last 4 cases, it is confirmed by letter before the date fixed by the contracting authority as the last date for the receipt of requests to be selected to negotiate.

(7) The contracting authority may exclude a services provider from those persons from whom it will make the selection of persons to be invited to negotiate the contract only if the services provider may be treated as ineligible on a ground specified in regulation 14 or if the services provider fails

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to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17 below.

(8) The contracting authority shall make the selection of the services providers 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 services providers on the grounds of their nationality or the member State in which they are established.