
STATUTORY INSTRUMENTS

2011 No. 1848

The Defence and Security Public Contracts Regulations 2011

PART 3

PROCEDURES LEADING TO THE AWARD OF A CONTRACT

The restricted procedure

17.—(1) A contracting authority using the restricted procedure shall comply with this regulation.

(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 the form of the contract notice, inviting requests to be selected to tender.

(3) Subject to paragraph (5), the date which the contracting authority fixes 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) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders when fixing time limits for the receipt of requests to be selected to tender and for receipt by it of tenders.

(5) Where the contracting authority has transmitted a contract by electronic means in accordance with the format and procedures referred to in paragraph (3) of Annex VI to the Defence and Security Procurement Directive, the time limit referred to in paragraph (3) may be reduced by seven days.

(6) Where compliance with the minimum time limit of 37 days referred to in paragraph (3) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit—

- (a) a time limit of not less than 15 days from the date of despatch of the contract notice; or
- (b) where the contracting authority has transmitted the contract notice by electronic means in accordance with paragraph (5), a time limit of not less than 10 days from the date of despatch of the contract notice.

(7) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude an economic operator from those economic operators from which it will make the selection of economic operators to be invited to tender only if the economic operator—

- (a) may be treated as ineligible to tender on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
 - (i) economic and financial standing; or
 - (ii) technical or professional ability.

(8) The contracting authority shall make the selection of the economic operators to be invited to tender in accordance with regulations 23, 24, 25 and 26 and shall award the contract in accordance with regulation 31.

(9) Where there is a sufficient number of economic operators suitable to be selected to be invited to tender, the contracting authority may limit the number of economic operators which it intends to invite to tender provided that the contract notice specifies—

- (a) the objective and non-discriminatory criteria to be applied in order to limit the number of economic operators in accordance with this paragraph; and
- (b) the minimum number of economic operators, which shall be not less than three, which the contracting authority intends to invite to tender and, where appropriate, the maximum number.

(10) The contracting authority shall ensure that the number of economic operators invited to tender is—

- (a) sufficient to ensure genuine competition; and
- (b) at least equal to the minimum number specified by the contracting authority in accordance with paragraph (9)(b).

(11) Subject to paragraph (10)(a), where—

- (a) the contracting authority carries out a selection in accordance with regulations 23, 24, 25 and 26, and
- (b) the number of economic operators selected to be invited to tender is less than the minimum number specified by the contracting authority in the contract notice,

that contracting authority may continue the award procedure with the economic operators which have been selected, provided that any economic operator not selected or which did not request to participate is not included.

(12) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing, or
- (b) technical or professional ability,

provided that those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(13) Without prejudice to the ability of the contracting authority to cancel the ongoing procurement procedure and launch a new procedure, if the contracting authority considers that the number of economic operators suitable to be selected to be invited to tender is too low to ensure genuine competition, it may suspend the procedure and republish the initial contract notice in accordance with paragraph (2) and regulation 48.

(14) Where the contracting authority suspends the procedure and republishes the initial contract notice in accordance with paragraph (13), it must fix a new date as the last date for the receipt by it of requests to be selected to tender and the economic operators selected upon the first publication and those selected upon the second must be invited in accordance with paragraph (15).

(15) The contracting authority shall send invitations in writing simultaneously to each economic operator selected to tender for the contract and the invitation shall—

- (a) be accompanied by the contract documents;
- (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or
- (c) where the contract documents are held by an entity other than the contracting authority, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.

(16) Where the contract documents are held by an entity other than the contracting authority, the contracting authority shall ensure that the contract documents are sent to economic operators by the most rapid means of communication possible.

(17) The contracting authority shall include the following information in the invitation—

- (a) the final date for the receipt by it of tenders, the address to which they must be sent and the one or more languages in which they must be drawn up;
- (b) a reference to the contract notice published in accordance with paragraph (2);
- (c) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with regulations 24, 25, and 26; and
- (d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with paragraph (2).

(18) Subject to paragraphs (20) and (21), the date which the contracting authority fixes as the last date for the receipt by it of tenders and which shall be specified in the invitation to tender in accordance with paragraph (17)(a), shall be not less than 40 days from the date of the despatch of the invitation.

(19) Where compliance with the minimum time limit of 40 days referred to in paragraph (18) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit, a time limit of not less than 10 days from the date of despatch of the invitation.

(20) Where—

- (a) the contracting authority has published a prior information notice in accordance with regulation 14,
- (b) the prior information notice contained as much of the information specified for a contract notice in Annex IV to the Defence and Security Procurement Directive or, if [Commission Regulation \(EC\) No 1564/2005](#) sets out a form to be used for that purpose, as much of the information therein specified, as was available at the time of publication, and
- (c) the prior information notice was sent to the Official Journal at least 52 days and not more than 12 months before the date on which the contract notice provided for in paragraph (2) is despatched,

the contracting authority may substitute for the period of not less than 40 days in paragraph (18), a period of generally not less than 36 days and in any event not less than 22 days.

(21) The contracting authority may reduce the time limits for the receipt by it of tenders referred to in paragraphs (18) and (20) by five days provided that—

- (a) the contracting authority offers unrestricted and full direct access by electronic means to the contract documents from the date of publication of the contract notice; and
- (b) the contract notice specifies the internet address at which the documents referred to in subparagraph (a) are available.

(22) The contracting authority or entity referred to in paragraph (15)(c) shall supply such further information relating to the contract documents as may be reasonably requested by an economic operator provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than four days before the date specified in the invitation to tender as the final date for the receipt by it of tenders.

(23) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the contracting authority to respond in accordance with paragraph (22) and, for whatever

reason, the contract documents or further information are not supplied in accordance with that paragraph; or

- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(24) The contracting authority may combine the reductions in the periods of time referred to in paragraphs (5) and (21).