
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 2

RULES ON PUBLIC CONTRACTS

SECTION 3

Procedures

Competitive procedure with negotiation

30.—(1) In a competitive procedure with negotiation, a contracting authority must permit any economic operator to submit a request to participate in response to a call for competition within the time period set in accordance with this regulation.

(2) A request by an economic operator referred to in paragraph (1) must be accompanied by the information for qualitative selection that is requested by the contracting authority.

(3) In the procurement documents, the contracting authority must—

- (a) identify the subject-matter of the procurement by providing a description of the authority's needs and the characteristics required of the works, supplies or services to be procured;
- (b) indicate which elements of the description define the minimum requirements to be met by all tenders; and
- (c) specify the contract award criteria.

(4) The information provided by the contracting authority in accordance with paragraph (3) must be sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure.

(5) The minimum time period for the receipt of requests to participate shall, subject to paragraph (11), be 30 days from the date on which—

- (a) the contract notice was sent for publication; or
- (b) where a prior information notice is used as a means of calling for competition, the invitation to confirm interest was sent.

(6) The minimum time period for the receipt of initial tenders shall, subject to paragraphs (7) to (11), be 30 days from the date on which the invitation to tender was sent.

(7) Where a contracting authority has published a prior information notice which was not itself used as a means of calling for competition, the minimum time period for the receipt of initial tenders referred to in paragraph (6), may be reduced to a minimum of 10 days provided that the prior information notice—

- (a) included all the information required in section I of Part B of Annex V, insofar as that information was available at the time the prior information notice was published; and
- (b) was sent for publication between 35 days and 12 months before the date on which the contract notice was sent.

(8) A sub-central contracting authority may set the time limit for the receipt of initial tenders by mutual agreement between the contracting authority and the selected candidates, provided that all the selected candidates have the same time to prepare and submit their initial tenders.

(9) In the absence of such an agreement, the time limit must be at least 10 days from the date on which the invitation to tender was sent.

(10) The time limit for the receipt of initial tenders provided for by paragraph (6) may be reduced by 5 days where the contracting authority accepts that tenders may be submitted by electronic means in accordance with regulation 23 (rules applicable to communication).

(11) Where a state of urgency duly substantiated by the contracting authority renders impracticable the time limit laid down in this regulation, it may fix a time limit—

- (a) for the receipt of requests to participate which shall not be less than 15 days from the date on which the contract notice was sent;
- (b) for the receipt of initial tenders which shall not be less than 10 days from the date on which the invitation to tender was sent.

(12) A contracting authority may limit the number of suitable candidates to be invited to participate in the procedure in accordance with regulation 66 (reduction of the number of otherwise qualified candidates to be invited to participate).

(13) Only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit an initial tender which shall be the basis for the subsequent negotiations.

(14) Subject to paragraph (16), a contracting authority must negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve its content.

(15) A contracting authority must not negotiate the minimum requirements or the award criteria referred to in paragraph (3).

(16) A contracting authority may award a contract on the basis of the initial tender without negotiation where the authority has indicated, in the contract notice or in the invitation to confirm interest, that the authority reserves the possibility of doing so.

(17) During the negotiations, a contracting authority must—

- (a) ensure equal treatment of all tenderers;
- (b) not provide information in a discriminatory manner which may give some tenderers an advantage over others;
- (c) inform in writing all tenderers whose tenders have not been eliminated of any changes to the technical specification or other procurement documents; and
- (d) following any such changes, provide sufficient time for all tenderers referred to in paragraph (c) to modify and re-submit amended tenders, as appropriate.

(18) In accordance with regulation 22 (confidentiality), a contracting authority must not reveal to the other participants confidential information communicated by a candidate or tenderer participating in the negotiations without its agreement.

(19) Such agreement must not take the form of a general waiver but must be given with reference to the intended communication of specific information.

(20) A contracting authority may conduct a competitive procedure with negotiation in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria specified in—

- (a) the contract notice;
- (b) the invitation to confirm interest; or
- (c) another procurement document.

(21) The contracting authority must indicate, in the contract notice, the invitation to confirm interest or in another procurement document, whether it will use the option described in paragraph (20).

(22) Where the contracting authority uses the option described in paragraph (20) it must ensure that in the final stage, the number of tenders remaining shall make for genuine competition in so far as there are enough tenders or qualified candidates.

(23) Where the contracting authority intends to conclude the negotiations, it must—

- (a) inform the remaining tenderers and set a common deadline to submit any new or revised tenders;
- (b) verify that the final tenders are in conformity with the minimum requirements and comply with regulation 57(1) (general principles);
- (c) assess the final tenders on the basis of the award criteria; and
- (d) award the contract in accordance with regulations 67 to 69.