
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 4

Techniques and Instruments for Electronic and Aggregated Procurement

Dynamic Purchasing Systems

35.—(1) A contracting authority may use a dynamic purchasing system for commonly used purchases the characteristics of which, as generally available on the market, meet their requirements.

(2) The dynamic purchasing system must—

- (a) be operated as a completely electronic process; and
- (b) throughout the period of validity of the system, be open to any economic operator that satisfies the selection criteria.

(3) The dynamic purchasing system may be divided into categories of works, supplies or services that are objectively defined on the basis of characteristics of the procurement to be undertaken under the category concerned.

(4) The characteristics referred to in paragraph (3) may include reference to either or both of—

- (a) the maximum allowable size of the subsequent specific contracts; and
- (b) a specific geographic area in which subsequent specific contracts will be performed.

(5) In order to procure under a dynamic purchasing system, a contracting authority must follow the restricted procedure, and accordingly the provisions of regulation 29 (restricted procedure) apply, subject to the following provisions of this regulation.

(6) A contracting authority must admit to a dynamic purchasing system all of the candidates satisfying the selection criteria and must not limit the number of candidates to be admitted whether under regulations 29(4) (restricted procedure) or 66 (reduction of the number of otherwise qualified candidates to be invited to participate) or otherwise.

(7) Where a contracting authority has divided the system into categories of works, supplies or services in accordance with paragraph (3), the authority must specify the applicable selection criteria for each category.

(8) The minimum time limit for receipt of requests to participate shall be 30 days from the date on which—

- (a) the contract notice is [^{F1}submitted]; or

Status: Point in time view as at 31/12/2020. This version of this provision has been superseded.

Changes to legislation: The Public Contracts (Scotland) Regulations 2015, Section 35 is up to date with all changes known to be in force on or before 11 June 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)

- (b) where a prior information notice is used as a means of calling for competition, the invitation to confirm interest is sent.
- (9) No further time limits for receipt of requests to participate shall apply once the invitation to tender for the first specific procurement under the dynamic purchasing system has been sent.
- (10) The minimum time limit for receipt of tenders shall be 10 days from the date on which the invitation to tender is sent.
- (11) All communications in the context of a dynamic purchasing system must be made only by electronic means in accordance with regulation 23(1) to (7) and (11) to (20) (Rules applicable to communication).
- (12) For the purposes of awarding contracts under a dynamic purchasing system, a contracting authority must—
- (a) publish a call for competition making it clear that a dynamic purchasing system is involved;
 - (b) indicate in the procurement documents at least the nature and estimated quantity of the purchases envisaged, as well as all the necessary information concerning the dynamic purchasing system, including how the system operates, the electronic equipment used and the technical connection arrangements and specifications;
 - (c) indicate in the procurement documents any division into categories of works, supplies or services and the characteristics defining them; and
 - (d) throughout the period of validity of the system, offer unrestricted and full direct access to the procurement documents in accordance with regulation 54 (electronic availability of procurement documents).
- (13) A contracting authority must, throughout the period of validity of the dynamic purchasing system, give any economic operator the possibility of requesting to participate in the system under the conditions referred to in paragraphs (5) to (12).
- (14) A contracting authority must finalise evaluation of such requests in accordance with the selection criteria within 10 working days following their receipt.
- (15) The deadline referred to in paragraph (14) may be extended to a maximum of 15 working days in individual cases where justified, in particular, because of the need to examine additional documentation or otherwise to verify whether the selection criteria are met.
- (16) Despite paragraphs (14) and (15), as long as the invitation to tender for the first specific procurement under the dynamic purchasing system has not been sent, a contracting authority may extend the evaluation period provided that no invitation to tender is issued during the extended evaluation period.
- (17) Where a contracting authority intends to extend the evaluation period in accordance with paragraph (16), the authority must indicate in the procurement documents the length of the extended period that the authority intends to apply.
- (18) A contracting authority must inform the economic operator concerned at the earliest possible opportunity of whether or not it has been admitted to the dynamic purchasing system.
- (19) A contracting authority must invite all admitted participants to submit a tender for each specific procurement under the dynamic purchasing system, in accordance with regulation 55 (invitations to candidates).
- (20) Where the dynamic purchasing system has been divided into categories of works, supplies or services, a contracting authority must invite every relevant participant to submit a tender.
- (21) In paragraph (20), “relevant participant” means an economic operator which has been admitted to the dynamic purchasing system in relation to the category corresponding to the specific procurement concerned.

(22) A contracting authority must award the contract to the tenderer that submitted the most economically advantageous tender on the basis of the award criteria set out in the contract notice for the dynamic purchasing system or, where a prior information notice is used as a means of calling for competition, in the invitation to confirm interest.

(23) Those criteria may, where appropriate, be formulated more precisely in the invitation to tender.

(24) A contracting authority may, at any time throughout the period of validity of the dynamic purchasing system, require admitted participants to submit a renewed [F²SPD] within 5 working days from the date on which that request is transmitted.

(25) Regulation 60(8) to (11) (F³...Single Procurement Document: use, content and form of the [F⁴SPD]) shall apply throughout the period of validity of the dynamic purchasing system.

(26) A contracting authority must indicate the period of validity of the dynamic purchasing system in the call for competition.

[F⁵(27) Where the period of validity is changed without terminating the dynamic purchasing system, the contracting authority shall submit for publication on the UK e-notification service a notice of the kind used initially for the call for competition for the dynamic purchasing system.

(27A) Where a dynamic purchasing system is terminated before the end of the period of validity that had most recently been indicated under paragraph (26) or (27), the contracting authority shall submit for publication on the UK e-notification service a contract award notice under regulation 51 (contract award notices).]

(28) No charges may be made to any economic operators which are interested in or are a party to the dynamic purchasing system.

Textual Amendments

- F1** Word in reg. 35(8)(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(29)(a)** (with sch. paras. 1-5)
- F2** Word in reg. 35(24) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(29)(b)** (with sch. paras. 1-5)
- F3** Word in reg. 35(25) 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(29)(c)(i)** (with sch. paras. 1-5)
- F4** Word in reg. 35(25) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(29)(c)(ii)** (with sch. paras. 1-5)
- F5** Reg. 35(27)(27A) substituted for reg. 35(27) (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(29)(d)** (with sch. paras. 1-5)

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