
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

Electronic Auctions

36.—(1) A contracting authority may use electronic auctions, in which economic operators present one or both of the following:—

- (a) new prices, revised downwards; or
- (b) new values concerning certain elements of tenders.

(2) A contracting authority must structure the electronic auction as a repetitive electronic process, which occurs after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.

(3) Electronic auctions must not be used for public works contracts or public service contracts, which have as their subject-matter intellectual activities (such as the design of works) which cannot be ranked using automatic evaluation methods.

(4) A contracting authority which decides to hold an electronic auction must state that fact in the contract notice or in the invitation to confirm interest.

(5) In open or restricted procedures or competitive procedures with negotiation when the content of the procurement documents, in particular the technical specifications, can be established with precision a contracting authority—

- (a) may decide that the award of a public contract shall be preceded by an electronic auction;
- (b) may hold an electronic auction—
 - (i) on the reopening of competition among the parties to a framework agreement as provided for in regulation 34(7)(b) or (c) (framework agreements); or
 - (ii) on the opening for competition of contracts to be awarded under a dynamic purchasing system.

(6) The electronic auction must be based on prices, on the new values of the features of the tenders indicated in the procurement documents or on both, where the contract is awarded on the basis of the best price-quality ratio.

Changes to legislation: *The Public Contracts (Scotland) Regulations 2015, Section 36 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) View outstanding changes*

(7) Where a contracting authority has decided to hold an electronic auction, the procurement documents must include at least the following—

- (a) the features, the values for which will be the subject of electronic auction, provided that such features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding; and
- (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.

(8) Before proceeding with an electronic auction, a contracting authority must make a full initial evaluation of the tenders in accordance with the award criteria and with the weighting fixed for them.

(9) A tender must be considered admissible where—

- (a) it has been submitted by a tenderer who has not been excluded pursuant to regulation 58 (exclusion grounds) and who meets the selection criteria; and
- (b) it is in conformity with the technical specifications without being irregular, unacceptable or unsuitable.

(10) A tender must be considered to be irregular for the purposes of paragraph (9)(b) where—

- (a) it does not comply with the procurement documents;
- (b) it was received late;
- (c) there is evidence of collusion or corruption; or
- (d) it has been found by the contracting authority to be abnormally low.

(11) A tender must be considered to be unacceptable for the purposes of paragraph (9)(b) where—

- (a) it was submitted by a tenderer which does not have the required qualifications; or
- (b) the price tendered exceeds the contracting authority's budget as determined and documented prior to the commencement of the procurement procedure.

(12) A tender must be considered not to be suitable for the purpose of paragraph (9)(b) where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents.

(13) All tenderers that have submitted admissible tenders must be invited simultaneously to participate in the electronic auction using, as of the date and time specified in the invitation, the technical connection arrangements referred to in accordance with the instructions set out in the invitation.

(14) The electronic auction may take place in a number of successive phases.

(15) The electronic auction must not start sooner than 2 working days after the date on which invitations are sent out.

(16) The invitation must be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in regulation 67(9) (contract award criteria).

(17) The invitation must also state the mathematical formula to be used in the electronic auction to determine the automatic re-rankings on the basis of the new prices or new values submitted, or both.

(18) The formula referred to in paragraph (17) must incorporate the weighting of all the criteria established to determine the most economically advantageous tender, as indicated in the notice used as a means of calling for competition or in other procurement documents.

(19) For the purpose of paragraph (18), any ranges of weightings must be reduced beforehand to a specified value.

(20) Where variants are authorised in accordance with regulation 46 (variants), a separate formula must be provided for each variant.

(21) Throughout each phase of an electronic auction the contracting authority must instantaneously communicate to all tenderers at least sufficient information to enable the tenderers to ascertain their relative rankings at any moment.

(22) A contracting authority may, where this has been previously indicated, communicate other information concerning other prices or values submitted.

(23) A contracting authority may also at any time announce the number of participants in the current phase of the auction.

(24) In no case, however, may a contracting authority disclose the identities of the tenderers during any phase of an electronic auction.

(25) A contracting authority must close an electronic auction—

(a) at the previously indicated date and time;

(b) when the authority receives no more new prices or new values which meet the requirements concerning minimum differences specified in accordance with paragraph (7) (e), provided that the authority has previously stated the time which they will allow to elapse after receiving the last submission before they close the electronic auction; or

(c) when all of the previously indicated number of phases in the auction have been completed.

(26) Where the contracting authority intends to close an electronic auction in accordance with paragraph (25)(c), whether or not in combination with any arrangements laid down in paragraph (25) (b), the authority must indicate in the invitation to participate in the auction the timetable for each phase of the auction.

(27) After closing an electronic auction, a contracting authority must award the contract in accordance with regulation 67 (contract award criteria) on the basis of the results of the electronic auction.

Changes to legislation:

The Public Contracts (Scotland) Regulations 2015, Section 36 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.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Regulations applied by [2023 c. 54 s. 119\(2\)\(a\)](#)

Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 11(1)(e)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(i\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 11(1)(e)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 78(1)(i)(ii) and words inserted by [S.S.I. 2019/112 reg. 3\(52\)\(a\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))