
STATUTORY INSTRUMENTS

1991 No. 2680

The Public Works Contracts Regulations 1991

PART V

THE AWARD OF A PUBLIC WORKS CONTRACT

Criteria for the award of a public works contract

20. –

(1) Subject to paragraphs (6) and (7) below, a contracting authority shall award a public works contract on the basis of the offer which–

- (a) offers the lowest price, or
- (b) is the most economically advantageous to the contracting authority.

(2) The criteria which a contracting authority may use to determine that an offer is the most economically advantageous include price, period for completion, running costs, profitability and technical merit.

(3) Where a contracting authority intends to award a public works contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in the contract notice or in the contract documents.

(4) Where a contracting authority awards a public works contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if the offer meets the minimum requirements of the contracting authority and it has indicated in the contract notice that offers offering variations will be considered and has stated in the contract documents the minimum requirements which the offer must meet and any specific requirements for the presentation of an offer offering variations.

(5) A contracting authority may not reject a tender on the ground that the technical specifications in the tender have been defined by reference to European specifications (within the meaning of regulation 8(1)) or to the national technical specifications specified in regulation 8(7)(a) and (b).

(6) If an offer for a public works contract is abnormally low the contracting authority may reject that offer but only if it has requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low and has–

- (a) if awarding the contract on the basis of the offer which offers the lowest price, examined the details of all the offers made, taking into account any explanation given to it of the abnormally low tender, before awarding the contract, or
- (b) if awarding the contract on the basis of the offer which is the most economically advantageous, taken any such explanation into account in assessing which is the most economically advantageous offer,

and, in considering that explanation, the contracting authority may take into account explanations which justify the offer on objective grounds including the economy of the construction method, the technical solutions suggested by the contractor or the exceptionally favourable conditions available

to the contractor for the carrying out of the works or the originality of the works proposed by the contractor.

(7) If a contracting authority which rejects an abnormally low offer is awarding the contract on the basis of the offer which offers the lowest price, it shall send a report justifying the rejection to the Treasury for onward transmission to the Commission.

(8) For the purposes of this regulation an “offer” includes a bid by one part of a contracting authority to carry out work or works for another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice

21. –

(1) A contracting authority which has awarded a public works contract shall, no later than 48 days after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part E of Schedule 2 and, subject to paragraph (2) below, including the information therein specified in relation to the contract.

(2) Any of the information specified in Part E of Schedule 2 to be included in the contract award notice may be omitted in a particular case where to publish such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of any person or might prejudice fair competition between contractors.

Information about contract award procedures

22. –

(1) A contracting authority which has awarded a public works contract shall, within 15 days of the date on which it receives a request from any contractor who was unsuccessful (whether pursuant to regulation 11(7), 12(4), 12(5), 13(7), 13(8) or 20), inform that contractor of the reasons why he was unsuccessful and, if the contractor was unsuccessful as a result of the evaluation of offers made in accordance with regulation 20, the name of the person awarded the contract.

(2) A contracting authority shall prepare a record in relation to each public works contract awarded by it specifying–

- (a) the name and address of the contracting authority;
- (b) the work or works to be carried out under the contract and the value of the consideration to be given under it;
- (c) the names of the persons whose offers were evaluated in accordance with regulation 20 and, where the contracting authority has used the restricted or negotiated procedure, the reasons for their selection;
- (d) the names of the persons who were unsuccessful pursuant to regulation 11(7), 12(4), 12(5), 13(7) or 13(8);
- (e) the name of the person to whom the contract was awarded and the reasons for having awarded the contract to him;
- (f) if known to the contracting authority, the works under the contract which the person to whom the contract has been awarded intends to sub-contract to another person;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 10(2) constituted the grounds for using that procedure.

(3) If the Commission requests a report in relation to a public works contract containing the information specified in paragraph (2) above, the contracting authority shall send a written report

containing that information, or the main features of it, to the Treasury for onward transmission to the Commission.

(4) Where a contracting authority decides not to award a public works contract in respect of which a contract notice was published nor to seek offers in relation to another public works contract for the same purpose it shall inform the Official Journal of that decision and shall, if so requested by any contractor who submitted an offer or who applied to be included amongst the persons to be selected to tender for or negotiate the contract, the reasons for its decision.