
STATUTORY INSTRUMENTS

1993 No. 3228

The Public Services Contracts Regulations 1993

PART III

**PROCEDURES LEADING TO THE AWARD
OF A PUBLIC SERVICES CONTRACT**

Selection of contract award procedure

10.—(1) For the purposes of seeking offers in relation to a proposed public services contract a contracting authority shall use the open procedure, the restricted procedure or the negotiated procedure and shall decide which of those procedures to use in accordance with the following paragraphs of this regulation.

(2) A contracting authority may use the negotiated procedure in the following circumstances—

(a) subject to paragraph (3) below, in the event that the procedure leading to the award of a contract by the contracting authority using the open or restricted procedure was discontinued—

(i) because of irregular tenders, or

(ii) following an evaluation made in accordance with regulation 11(8) or 12(4),

and, without prejudice to the generality of the meaning of the words “irregular tenders”, a tender may be considered irregular if the services provider fails to meet the requirements of, or the tender offers variations on the requirements specified in, the contract documents where this is not permitted under the terms of the invitation to tender, or the services, materials or goods offered do not meet the technical specifications (within the meaning of regulation 8(1) above) of the contracting authority;

(b) exceptionally, when the nature of the services to be provided, or the risks attaching thereto, are such as not to permit prior overall pricing;

(c) when the nature of the services to be provided, in particular in the case of intellectual services or services specified in category 6 of Part A of Schedule 1, is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure;

(d) subject to paragraph (3) below, in the absence of tenders or of appropriate tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;

(e) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services to be provided may only be provided by a particular person;

(f) when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;

(g) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time

limits specified in regulations 11 and 12 if the open or restricted procedure is used, or the time limits specified in regulation 13 if the negotiated procedure is used pursuant to paragraph (2)(a) to (c) above, cannot be met;

- (h) subject to paragraph (4) below, when a contracting authority wants a person who has entered into a public services contract with the contracting authority to provide additional services which were not included in the project initially considered or in the original services contract but which through unforeseen circumstances have become necessary, and—
 - (i) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the contracting authority, or
 - (ii) such services can be provided separately from the services provided under the original contract but are strictly necessary to the performance of that contract; and
- (i) subject to paragraph (5) below, when a contracting authority wishes a person who has entered into a public services contract with it to provide new services which are a repetition of services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

(3) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(a) or (d) above unless the proposed terms of the contract are substantially unaltered from the proposed terms of the contract in relation to which offers were sought using the open or restricted procedure.

(4) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(h) above where the aggregate value of the consideration to be given under contracts for the additional services exceeds 50 per cent of the value of the consideration payable under the original contract; and, for the purposes of this paragraph, the value of the consideration shall be taken to include the estimated value of any goods which the contracting authority provided to the person awarded the contract for the purpose of carrying out the contract.

(5) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(i) above unless the contract notice relating to the original contract stated that a services contract for new services which would be a repetition of the services provided under the original contract may be awarded using the negotiated procedure pursuant to paragraph (2)(i) above and unless the procedure for the award of the new contract is commenced within three years of the original contract being entered into.

(6) In all other circumstances the contracting authority shall use the open procedure or restricted procedure.

(7) A contracting authority using the negotiated procedure pursuant to paragraph (2)(d) above shall, if the Commission requests it, submit a report recording the fact that it has done so to the Treasury for onward transmission to the Commission.