

SCHEDULE 3

Decisions taken in accordance with paragraph 3 of Article 5 of Regulation (EC) No. 1370/2007

PART 1

Information about contract award procedures

Award decision notice

1. Subject to paragraph 8 the Department shall, as soon as possible after the decision under Article 5(3) of Regulation (EC) No. 1370/2007 has been made, inform the tenderers and the candidates of its decision to award the contract, and shall do so by notice in writing by the most rapid means of communication practicable.

2. Where it is to be sent to a tenderer, the notice referred to in paragraph 1 shall include –

(1) the criteria for the award of the contract;

(2) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by –

(a) the person who is to receive the notice; and

(b) the person to be awarded the contract,

and anything required by paragraph 6.

(3) the name of the person to be awarded the contract; and

(4) a precise statement of either –

(a) when, in accordance with paragraphs 12 to 17 the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any and if so what contingencies; or

(b) the date before which the Department will not, in conformity with paragraphs 12 to 17, enter into the contract.

3. Where it is to be sent to a candidate, the notice referred to in paragraph 1 shall include –

(1) the reasons why the candidate was unsuccessful; and

(2) the information mentioned in paragraph 2, but as if the words “and relative advantages” were omitted from subparagraph (2).

4. Where the only tenderer is the one who is to be awarded the contract, and there are no candidates, the Department need not comply with paragraph 1.

Reasons to be given on request

5. Except to the extent that the Department has already informed the person whether by notice under paragraph 1 or otherwise), and subject to paragraph 8 the Department shall within 15 days of the date on which it receives a request in writing from any person who was unsuccessful –

(1) inform that person of the reasons why he was unsuccessful; and

(2) if the person submitted an admissible tender, the Department shall inform that person of the characteristics and relative advantages of the successful tender and the name of the person to be awarded the contract.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

6. The reasons referred to in paragraph 2(2) and 5(1) shall include any reason for the Department's decision that the person did not meet the technical specifications required for the contract.

Abandonment or recommencement of procedure

7. Subject to paragraph 9 the Department shall, as soon as possible after the decision has been made, inform any candidates and tenderers of its decision to abandon or to recommence a contract award procedure in relation to the award of a contract.

8. Where the Department informs a person of its decision in accordance with paragraph 7 it shall
- (1) include the reasons for its decision; and
 - (2) provide the decision and reasons in writing if requested by the person.

Grounds for withholding information

9. The Department may withhold any information to be provided in accordance with paragraph 1, 2, 5, 6, 7 or 8 where the disclosure of such information –

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would prejudice legitimate commercial interests; or
- (d) might prejudice fair competition.

Definitions

10. For the purposes of this Part –

(1) “candidate” means a person (other than a tenderer) who applied to be included amongst those to be selected to tender or to negotiate the contract, but does not include any person who has been informed of the rejection of his application, and the reasons for it; and

(2) “tenderer” means a person who submitted an offer and has not been definitively excluded.

11. For the purposes of paragraph 10(2) –

- (a) a tenderer has been excluded if his offer has been excluded from consideration; and
- (b) an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either –
 - (i) the exclusion has been held to be lawful in proceedings under this Schedule; or
 - (ii) the time limit for starting such proceedings has expired even on the assumption that the Court would have granted the maximum extension permitted by paragraphs 19(4) and (5).