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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 1**

**The Public Contracts (Scotland) Regulations 2006**

**PART 3**

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

**The open procedure**

**15.**—(1) A contracting authority using the open procedure shall comply with this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal as soon as possible after forming the intention a notice, in the form of the contract notice in Annex II to Commission Regulation (EC) No. 1564/2005, inviting tenders and containing the information therein specified.

(3) Subject to paragraphs (5), (6) and (7), the date which the contracting authority fixes as the last date for the receipt by it of tenders made in response to the contract notice shall be specified in the contract notice and shall be not less than 52 days from the date of despatch of the notice.

(4) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders when fixing time limits for the receipt by it of tenders.

(5) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph (3) of Annex VIII to the Public Sector Directive<sup>(1)</sup>, the time limits referred to in paragraphs (3) and (7) may be reduced by 7 days.

(6) The contracting authority may reduce the time limits for the receipt by it of tenders by 5 days provided that—

- (a) the contracting authority offers unrestricted and full direct access by electronic means to the contract documents from the date of publication of the contract notice; and
- (b) the contract notice specifies the internet address at which the documents referred to in sub paragraph (a) are available.

(7) Where—

- (a) the contracting authority has published a prior information notice in accordance with regulation 11;
- (b) the prior information notice contained as much of the information referred to in the form of the contract notice in Annex II to Commission Regulation (EC) No. 1564/2005 as was available at the time of publication; and
- (c) the prior information notice was sent to the Official Journal at least 52 days and not more than 12 months before the date on which the contract notice provided for in paragraph (2) is despatched;

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<sup>(1)</sup> The format and procedures referred to are available at the Internet address <http://simap.eu.int>.

the contracting authority may substitute for the period of not less than 52 days specified in paragraph (3), a shorter period of generally not less than 36 days and in any event not less than 22 days.

(8) Where the contracting authority does not offer unrestricted and full direct access by electronic means to the contract documents in accordance with paragraph (6), the contracting authority shall send the contract documents to an economic operator within 6 days of the receipt of a request from that economic operator, provided that the documents are requested in good time before the date specified in the contract notice as the final date for the receipt by it of tenders.

(9) The contracting authority shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator, provided that the request is received in sufficient time to enable the contracting authority to supply the information not later than 6 days before the date specified in the contract notice as the final date for the receipt by it of tenders.

(10) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the contracting authority to respond in accordance with paragraphs (8) and (9) and, for whatever reason, the contract documents or further information are not supplied in accordance with those paragraphs; or
- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(11) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude a tender from the evaluation of offers made in accordance with regulation 30 only if the economic operator

- (a) may be treated as ineligible to tender on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
  - (i) economic and financial standing; or
  - (ii) technical or professional ability.

(12) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing; and/or
- (b) technical or professional ability;

provided that those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(13) The contracting authority may combine the reductions in the periods of time referred to in paragraphs (5) and (6).