

Public Contracts Regulations 2015

Chapter 9 – Tendering and Contract Award

Our Policy

You must ensure that you comply with the new Public Procurement Regulations listed in paragraph 5. These introduce new rules for procurement under Public Contract Regulations (PCR) 2015.

Purpose and Scope

1. This guidance explains the legal obligations that you must follow when conducting the tendering exercise under the Public Contracts Regulations 2015 (PCR 2015) and provides advice on the key issues for legal compliance.
2. You can find full details of how to conduct the tendering exercise in the Tendering and Contract Award suite of Commercial Policy Statements on the [Commercial Toolkit](#), which you should read in conjunction with this guidance.
3. This guidance is written primarily for Commercial Officers so 'you' indicates an action on the Commercial Officer.

What is the legal framework?

4. The rules in the PCR 2015 specific to tendering and contract award are:

Regulation	Subject
45	Variants
46	Division of contracts into lots
47	Setting time limits
50	Contract Award Notices
55	Informing candidates and tenderers
66	Reduction of the numbers of tenders and solutions
67	Contract award criteria
68	Life-cycle costing
69	Abnormally low tenders
Schedule [IX]	Contents of the invitations to submit a tender, to participate in the dialogue or to confirm interest provided under Regulation 54.

Prior involvement of tenderers

5. You must consider the implications of any prior involvement of a tenderer in the earlier procurement phases. This could be anything from providing advice while preparing the procurement strategy to conducting market consultations. It is important that you take the appropriate measures to ensure that competition is not distorted by the tenderer having been involved at an earlier stage or previous procurement. This can be managed by:

- a. providing all information presented to the initial tenderer in question to all other parties; or
- b. setting an adequate time for tender returns so that all parties can review and comprehend the information.

6. You can only exclude a tenderer from the procurement process where there are no other means to ensure compliance i.e. where a conflict cannot be suitably managed. You have a duty to treat all tenderers equally.

7. Prior to the exclusion, you must give the tenderer the opportunity to prove that their involvement so far will not distort the competition. The decision to exclude a tenderer on such grounds must be made by the Commercial Band B2 or above. You should also consult the [Conflicts of Interest CPS](#).

Variants

8. Regulation 45 permits you to authorise or permit tenderers to submit variants. A variant bid is where the tenderer departs from the original specification and offers an alternative solution. You must state in your Contract Notice whether you will authorise or permit variants. You must not authorise variants if you did not state in the Contract Notice they would be permitted.

9. You should consider allowing variants as often as possible because of the importance of encouraging innovation. However, you must define, in the Contract Notice, the minimum requirements to be met by variants when indicating that variants may be submitted. You must link these minimum requirements to the subject matter of the contract, and you must only consider variant bids that meet the stated minimum requirements.

10. You should also give consideration to the practical implications of allowing a tenderer to submit more than one solution. Evaluation and selection of multiple solutions brings practical and legal risk associated with a large number of solutions, for example, the increased administrative time involved in handling the dialogue process associated with numerous solutions.

11. You must state in the procurement documents the minimum requirements that must be met by the variants and any specific requirements for their presentation. Particularly whether variants may be submitted only where a standard tender (i.e. not a variant bid) has also been submitted. You must also ensure that the chosen award criteria can be applied to variants meeting those minimum requirements as well as to standard tenders.

12. Where you have authorised or permitted variants you are not permitted to reject a variant on the sole grounds that it would, where successful, lead to a service contract rather than a public supply contract.

Division of contracts into lots

13. Lots are used when the requirement is divided up into a number of categories. The use of lots potentially allows for multiple providers to be appointed following one procurement process. An example might be a computer hardware procurement with one lot for 'laptops' and a second lot for 'desktops'.
14. To encourage Small to Medium Sized Enterprises (SMEs) to bid for public contracts, which will support innovation, value for money and growth, you should consider awarding a contract, particularly large contracts, in the form of separate lots. You have the flexibility to determine the size and subject-matter of such lots. However, while lots may work well in commodity procurements, they are not suited to complex procurement where issues of integration, interoperability and compatibility are more important.
15. If you decide not to award a contract in the form of separate lots, you must explain the reasons for your decision. The reasons must be included in the procurement documents or report referenced in Regulation 84(1) (Individual reports on procedures for the award of contracts). Possible reasons for not awarding a contract in separate lots could include:
 - a. dividing into lots could restrict competition;
 - b. dividing into lots could risk making the contract excessively technically difficult or expensive to manage; or
 - c. the need to coordinate the different contractors could seriously undermine the proper management of the contract.
16. You must indicate in your Contract Notice whether tenders may be submitted for one, for several or for all of the lots.
17. In order to preserve competition or ensure reliability of supply, or both, you are allowed to limit the number of lots that any one tenderer may be awarded provided you explain how you will do so in your Contract Notice.
18. The explanation of any limit on the number of lots that a tenderer can win must include clear non-discriminatory and objective rules to determine what happens if one tenderer would have otherwise won more than the maximum number of lots.
19. If the initial tender evaluation results in one tenderer achieving the best score for more lots than the maximum number, you must indicate in the procurement documents the objective and non discriminatory criteria or rules you intend to apply for determining which lots will be awarded.
20. Where more than one lot may be awarded to the same tenderer, you may award contracts combining several or all lots. However, you must have specified in the Contract Notice that you reserve the right to do so and indicate the lots or groups of lots that may be combined.
21. You must conduct a comparative assessment by first determining which tenders best fulfil the award criteria for each individual lot and then comparing it with the tenders submitted by a particular tenderer for a specific combination of lots, taken as a whole.

Setting time limits

22. Regulations 27 to 31 set out the minimum time limits for receipt of tenders from the date on which the Invitation to Tender (ITT) was sent in each procurement procedure. You can find details in Annex B of Chapter 3 – Competitive Procurement.
23. When you are setting the time limits for the receipt of tenders, you must take account of the complexity of the contract and the time required for preparing tenders. This may require you to set a longer period than the minimum time limits.
24. Where the tenderer can only submit their tender after a visit to the site or on-the-spot inspection of the supporting information, you must fix the time limits for the receipt of tenders so that all tenderers have sufficient time to evaluate and use all the information needed to produce tenders, which must be longer than the minimum time limits.
25. You may extend the time limits for the receipt of tenders in the following circumstances:
- a. where you fail, for whatever reason, to supply additional information requested in good time by the tenderer, by at the latest six (6) days before the time limit for receipt of tenders. In an accelerated procedure that period is four (4) days; or
 - b. where significant changes are made to the procurement documents. Significant changes are changes (in particular to the technical specifications) that result in suppliers needing additional time in order to understand and respond properly to the changes. However, they must not be so substantial that they make the contract materially different from the one initially set out in the procurement documents.
26. The length of the extension must be proportionate to the importance of the information or change.
27. If the tenderer has not requested the additional information in good time or its importance with a view to preparing responsive tenders is insignificant, you are not required to extend the time limits.

Subcontracting

28. Regulation 71 requires you to make a decision on what information you require from sub-contractors when preparing your tender documentation. You should refer to [Influencing Supply Chain Management](#) topic for specific information.

Reduction of the numbers of tenders and solutions

29. You may choose to reduce the number of tenders to be negotiated as provided for in Regulation 29(6) (Competitive procedure with negotiation) or of solutions to be discussed as provided for in Regulation 30(4) (Competitive dialogue). If you choose to do this you must apply the award criteria stated in the procurement documents. In the final stage of dialogue or negotiation, it is

essential that the number of tenders or solutions submitted is sufficient to ensure effective competition.

Award criteria

30. You must award contracts on the basis of the 'Most Economically Advantageous Tender (MEAT)'. However, the meaning of MEAT has changed in the PCR 2015.
31. 'MEAT' should be assessed on the basis of the best price-quality ratio, which must always include a price or cost element. However, you are still permitted to carry out an assessment of the most economically advantageous tender on the basis of either price or cost effectiveness only.
32. You may assess the MEAT on the basis of criteria, including qualitative, lifecycle costing, environmental or social aspects, linked to the subject-matter of the contract in question. Such criteria may comprise of, for instance:
- a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - b. organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract; or
 - c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion.
33. The cost element may also take the form of a fixed price or cost on the basis of which tenderers will compete on quality criteria only.
34. Regulation 67 places a greater emphasis on rewarding quality, innovation and sound environmental and social practices.
35. For example, your award criteria may take into account the inclusion of vulnerable and disadvantaged people or the use of non-toxic substances in the production process to deliver the requirement. In addition, you may require that goods, works or services bear specific labels certifying environmental, social or other characteristics provided that:
- a. the label is:
 - (1) linked to the subject matter of the contract;
 - (2) required to define the characteristics of the contract; and
 - (3) accessible to all interested parties; and
 - b. you accept equivalent labels.
36. You must ensure that the award criteria are linked to the subject-matter of the contract. This will occur where they relate to the goods, works or services specified in the requirement in any respect and at any stage of their life cycle, including the specific process:
- a. of production, provision or trading of those works, supplies or services; or
 - b. for another stage of their life cycle,

even where such factors do not form part of their material substance.

37. You must ensure your award criteria allow for the possibility of effective competition. It must be accompanied by specifications that allow the information provided by the tenderers to be effectively verified in order to assess how well the tenders meet the award criteria. In case of doubt, you must verify the accuracy of the information and proof provided by the tenderers.

38. You must specify in the procurement documents, the relative weighting you give to each of the criteria chosen to determine the Most Economically Advantageous Tender, except where this is identified on the basis of price alone. You may express the weightings by providing a range with an appropriate maximum spread. Where weighting is not possible for objective reasons, you must list the criteria in decreasing order of importance.

Full life-cycle costing

39. The Regulations allow you to take full life-cycle costing into account during tender evaluation. Life-cycle costing may cover all or part of the following costs over the life cycle of goods, works or services:

- a. costs borne by the contracting authority or other users, such as:
 - (1) costs relating to acquisition;
 - (2) costs of use, such as consumption of energy and other resources;
 - (3) maintenance costs;
 - (4) end of life costs, such as collection and recycling costs; or
- b. costs attributed to environmental externalities linked to the goods, works or services during its life-cycle, provided their monetary value can be determined and verified. Such costs may include the cost of:
 - (1) emissions of greenhouse gases and of other pollutant emissions:
and
 - (2) other climate change mitigation costs.

40. If you decide to assess the costs of the tenders using a life-cycle costing approach, you must indicate in your procurement documents the data to be provided by the tenderers and the method you will use to determine the life-cycle costs based on that data.

41. The method used for the assessment of costs attributed to environmental externalities must:

- a. be based on objectivity, verifiable and non-discriminatory criteria (e.g. not unduly favour or disadvantage certain suppliers);
- b. be accessible to all interested parties; and
- c. not be unduly burdensome, i.e. the data required can be provided with reasonable effort by normally diligent suppliers, including suppliers from outside the EU.

Abnormally low tenders

42. You are obliged to investigate abnormally low tenders under Regulation 69. You must ask tenderers to explain the price or costs proposed in the tender where tenders appear to be abnormally low in relation to the works, supplies or services. Your investigation may, in particular, relate to:

- a. the economics of the manufacturing process, of the services provided or of the construction method;
- b. the technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the extension of the work;
- c. the originality of the work, supplies or services proposed by the tenderer;
- d. compliance with obligations referred to in Regulation 18(2) (principles of procurement);
- e. compliance with obligations referred to in Regulation 71; or
- f. the possibility of the tenderer obtaining State Aid.

43. You must assess the information provided by the tenderer. You may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed, taking into account the elements referred to above.

44. You must reject the tender where you have established that the tender is abnormally low because it does not comply with applicable obligations referred to in Regulation 18(2).

45. Where you establish that a tender is abnormally low because the tenderer has obtained State Aid you may reject the tender on that ground alone, but only after consultation with the tenderer. The consultation is to allow the tenderer to prove, within a reasonable time frame, that the Aid was legal within the meaning of Article 107 TFEU. Where you reject a tender on the grounds of State Aid, you must inform the Commission.

Contents of the Invitations to Tenders, etc

46. Regulation 54, Schedule IX includes information that you must include, as a minimum, in invitations to tender or to participate in dialogue. This information is detailed in Annex A.

Admissible Tenders

47. A tender will be admissible in a procurement procedure where it has:

- a. been submitted by a tenderer who has not been excluded under Regulation 57 (Exclusion grounds) and who meets the minimum selection criteria;
- b. conforms to the technical specifications; and
- c. is not irregular, unacceptable or unsuitable.

48. You must consider tenders irregular, where:
- they do not comply with the procurement documents;
 - they are received late;
 - there is evidence of collusion or corruption; or
 - the tender is abnormally low in price.
49. You must consider tenders unacceptable, where:
- they are submitted by tenderers that do not have the required qualifications; or
 - the tenderers price exceeds the contracting authority's budget as determined and internally documented prior to the launching of the procurement procedure.
50. You must consider tenders unsuitable where:
- they are irrelevant to the contract; or
 - are obviously incapable, without substantial changes, of meeting your needs and requirements as specified in the procurement documentation.

Tender Evaluation

51. You must make a full evaluation of the tenders in accordance with the award criteria and associated weighting. You can find guidance on how to conduct the tendering exercise in the [Tender Evaluation CPS](#).

Informing tenderers of procurement decisions

52. You must inform all tenderers as soon as possible of decisions reached concerning the conclusion of a framework agreement, the award of the contract or admittance to a dynamic purchasing system. This includes the grounds for any decision not to conclude a framework agreement, not to award a contract for which there has been a call for competition, to recommence the procedure or not to implement a dynamic purchasing system.

53. On request from the candidate or tenderer concerned, you must act as quickly as possible and, in any event within fifteen (15) calendar days from receipt of a written request, you must inform:

- any unsuccessful candidate, of the reasons for the rejection of their request to participate;
- any unsuccessful tenderer, of the reasons for the rejection of their tender, including, for the cases referred to in Regulation 42(5) and (6) (technical specifications), the reasons for your decision that the works, supplies or services do not meet the performance or functional requirements;
- any tenderer that submitted an acceptable tender, of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement; and

- d. any tenderer that submitted an acceptable tender, of the conduct and progress of negotiations and dialogue with tenderers.

Contract award notices

54. You must place a Contract Award Notice no later than thirty (30) calendar days after the award of the contract, as set out in Regulation 50. This notice will contain the information set out in Annex V Part D of the Regulations and must be published in accordance with Regulation 51.

55. In the case of framework agreements concluded in accordance with Regulation 33, you do not need to publish a Contract Award Notice for each call-off against that framework.

56. Although the Regulations permit the grouping of Notices for the results of contracts awarded against a framework agreement and a dynamic purchasing system on a quarterly basis, the MOD is not taking up this opportunity at this time. If the MOD takes up this opportunity in future you must send the grouped Notices within thirty (30) calendar days of the end of each quarter.

Withholding information

57. You may decide to withhold information in the Contract Award Notice or during informing tenderers of procurement decision, if the release of such information would:

- a. hinder law enforcement;
- b. otherwise be contrary to the public interest;
- c. prejudice the legitimate commercial interests of a particular tenderer, whether public or private; or
- d. prejudice fair competition between suppliers.

Contacts, Training and Further Information

58. The [Web Access Page](#) for the PCR 2015 contains a summary of the legislation, details of who you can speak to for advice, and what training is available. It also contains links to other relevant topics and information and to the individual chapters.

59. It also contains links to a Frequently Asked Questions document which is designed to help you apply this guidance. If you need further help regarding the contents of this Chapter you can consult the policy sponsor via the [Commercial Policy Help Desk](#).

Annex A

Contents of the Invitations to Submit a Tender, to Participate in the Dialogue or to Confirm Interest

1. The Invitation to Tender or to Participate in Dialogue provided for under Article 54 (invitations to candidates) must contain at least:
 - a. a reference to the published call for competition;
 - b. the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language or languages in which the tenders must be drawn up;
 - c. in the case of Competitive Dialogue, the date and the address set for the start of consultation and the language or languages to be used;
 - d. a reference to any possible supporting documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with Regulations 59 (European Single Procurement Document) and 60 (means of proof) and, where appropriate, Regulation 62 (quality assurance standards and environmental management standards), or to supplement the information referred to in those Regulations, and under the conditions laid down in Regulations 59, 60 and 62; and
 - e. the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, where they are not given in the Contract Notice, the invitation to confirm interest, the technical specifications or the descriptive document.
2. When you issued a Prior Information Notice as a call for competition, you must subsequently invite all candidates to confirm their interest on the basis of detailed information on the contract concerned, before beginning the selection of tenderers or participants in negotiations.
3. That invitation must include at least the following information:
 - a. the nature and quantity, including all options concerning complementary contracts and, where possible, the estimated time available for exercising these options for renewable contracts, the nature and quantity and, where possible, the estimated publication dates of future notices of competition for works, supplies or services to be put out to tender;
 - b. the type of procedure: Restricted or Competitive procedure with Negotiation;
 - c. where appropriate, the date on which the delivery of supplies or the execution of works or services is to commence or terminate;

- d. where electronic access cannot be offered, the address and closing date for the submission of requests for procurement documents and the language or languages in which they are to be drawn up;
- e. the address of the contracting authority which is to award the contract;
- f. economic and technical conditions, financial guarantees and information required from economic operators;
- g. the form of the contract which is the subject of the invitation to tender: purchase, lease, hire or hire-purchase, or any combination of these; and
- h. the contract award criteria and associated weighting or, where appropriate, the order of importance of such criteria, where this information is not given in the Prior Information Notice, the technical specifications or in the Invitation to Tender or Negotiate.