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STATUTORY INSTRUMENTS

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**2015 No. 102**

**The Public Contracts Regulations 2015**

**PART 2**

**RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE**

**CHAPTER 2**

**RULES ON PUBLIC CONTRACTS**

**SECTION 3**

*Procedures*

**Use of the negotiated procedure without prior publication**

**32.—(1)** In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.

*General grounds*

(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—

- (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;
  - (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:—
    - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
    - (ii) competition is absent for technical reasons,
    - (iii) the protection of exclusive rights, including intellectual property rights, but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
  - (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.
- (3) For the purposes of paragraph (2)(a)—
- (a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents;

(b) a request to participate shall be considered not to be suitable where the economic operator concerned—

- (i) is to be or may be excluded under regulation 57, or
- (ii) does not meet the selection criteria.

(4) For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

*Additional grounds relevant to public supply contracts*

(5) The negotiated procedure without prior publication may be used for public supply contracts—

- (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but contracts awarded in reliance on this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs;
- (b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (c) for supplies quoted and purchased on a commodity market;
- (d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.

(6) In the case of paragraph (5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.

*Additional ground relevant to public service contracts that follow a design contest*

(7) The negotiated procedure without prior publication may be used for public service contracts where the contract concerned—

- (a) follows a design contest organised in accordance with this Part, and
- (b) is to be awarded, under the rules provided for in the design contest, to—
  - (i) the winner of the design contest, or
  - (ii) one of the winners of the design contest.

(8) Where paragraph (7)(b)(ii) applies, all winners must be invited to participate in the negotiation.

*Additional ground relevant to new works or services which repeat similar ones*

(9) The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2).

(10) The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.

(11) As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when it applies regulation 5.

(12) This procedure may be used only during the 3 years following the conclusion of the original contract.