

The Public Contract Regulations 2006: Regulation 32 (As Amended).

This is an **unofficial** consolidated text of regulation 32. This version has been prepared by the Office of Government Commerce to reflect the various changes made to regulation 32 by the Public Contracts (Amendment) Regulations 2009. This version is intended to be helpful, but it is not itself an authoritative text. The authoritative texts are regulation 32 of the Public Contracts Regulations 2006 as made in 2006, read in conjunction with regulation 8 of the Public Contracts (Amendment) Regulations 2009 which amends it.

The amendments are in force from 20 December 2009, but the amending Regulations contain, in regulation 11, transitional provisions which should be consulted for clarification as to the circumstances in which the unamended version of regulation 32 will continue to apply to particular procurements (notably those commenced before 20 December 2009).

It should be noted that the Public Contracts (Amendment) Regulations 2009 make other important amendments to the 2006 Regulations. In particular, it should be noted that the 'standstill' requirements formerly contained in paragraphs (3) to (5) of regulation 32 are now contained in a new regulation 32A which is inserted after regulation 32 by regulation 9 of the amending Regulations.

Information about contract award procedures

Award decision notice

32.- (1) Subject to paragraph (13), a contracting authority shall, as soon as possible after the decision has been made, inform the tenderers and candidates of its decision to—

- (a) award the contract; or
- (b) conclude the framework agreement,

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—

- (a) the criteria for the award of the contract;
 - (b) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by—
 - (i) the economic operator which is to receive the notice; and
 - (ii) the economic operator—
 - (aa) to be awarded the contract; or
 - (bb) to become a party to the framework agreement,
- and anything required by paragraph (10);
- (c) the name of the economic operator—

- (i) to be awarded the contract; or
 - (ii) to become a party to the framework agreement; and
- (d) a precise statement of either-
- (i) when, in accordance with regulation 32A, the standstill period is expected to end and, if relevant, how its ending might be affected by any, and if so what, contingencies; or
 - (ii) the date before which the contracting authority will not, in conformity with regulation 32A, enter into the contract or conclude the framework agreement.

(2A) Where it is to be sent to a candidate, the notice referred to in paragraph (1) shall include-

- (a) the reasons why the candidate was unsuccessful; and
 - (b) the information mentioned in paragraph (2), but as if the words 'and relative advantages' were omitted from sub-paragraph (b).
- (3) *[revoked]*
- (4) *[revoked]*
- (5) *[revoked]*
- (6) *[revoked]*

(6A) Where the contract or framework agreement is permitted by these Regulations to be awarded or concluded without prior publication of a contract notice, the contracting authority need not comply with paragraph (1).

(6B) Where the only tenderer is the one who is to be awarded the contract or who is to become a party to the framework agreement, and there are no candidates, the contracting authority need not comply with paragraph (1).

(7) Where a contracting authority awards a contract under a framework agreement or a dynamic purchasing system, that contracting authority need not comply with paragraph (1).

(8) *[revoked]*

Reasons to be given on request to unsuccessful economic operators

(9) Except to the extent that the contracting authority has already informed the economic operator (whether by notice under paragraph (1) or otherwise), and subject to paragraph (13), a contracting authority shall within 15 days of the date on which it receives a request in writing from any economic operator which was unsuccessful (whether in accordance with regulation 15(11), 16(7), 16(8), 17(9), 17(10), 17(22), 17(23), 18(10), 18(11), 18(22), 18(23), 19(9), 20(8), 20(14) or 30)—

- (a) inform that economic operator of the reasons why it was unsuccessful; and
- (b) if the economic operator submitted an admissible tender, the contracting authority shall inform that economic operator of the characteristics and relative advantages of the successful tender and—
 - (i) the name of the economic operator to be awarded the contract;
 - (ii) the names of the parties to the framework agreement; or
 - (iii) the names of the economic operators admitted to the dynamic purchasing system.

(10) The reasons referred to in paragraph (2)(b) and (9)(a) shall include any reason for the contracting authority's decision that the economic operator did not meet the technical specifications—

- (a) as specified in regulation 9(6) by an equivalent means; or
- (b) in terms of the performance or functional requirements in regulation 9(7) by an equivalent means.

Abandonment or recommencement of procedure

(11) Subject to paragraph (13), a contracting authority 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 respect of which a contract notice has been published, in relation to—

- (a) the award of a contract;
- (b) the conclusion of a framework agreement; or
- (c) admittance to a dynamic purchasing system.

(12) A contracting authority which informs an economic operator of its decision in accordance with paragraph (11) shall—

- (a) include the reasons for the decision; and
- (b) provide the decision and reasons in writing if requested by the economic operator.

Grounds for withholding information

(13) A contracting authority may withhold any information to be provided in accordance with paragraph (1), (9) or (11) where the disclosure of such information—

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

Records and reports

(14) A contracting authority shall prepare a record in relation to each public contract awarded by it, framework agreement concluded by it or dynamic purchasing system established by it, specifying—

- (a) the name and address of the contracting authority;
- (b) the value of the consideration to be given under the contract, framework agreement or dynamic purchasing system and—
 - (i) the type of goods purchased or hired;
 - (ii) the work or works to be carried out; or
 - (iii) the services to be provided;
- (c) where offers were evaluated in accordance with regulation 30, the names of the economic operators which submitted those offers and where the contracting authority has used the restricted procedure or negotiated procedure, the reasons why those economic operators were selected;
- (d) the name of any economic operator—

- (i) to which the contract was awarded;
 - (ii) with which the framework agreement was concluded; or
 - (iii) which was admitted to the dynamic purchasing system;
- and the reasons for having—

- (aa) awarded the contract to, or concluded the framework agreement with, that economic operator; or
 - (bb) admitted that economic operator to the dynamic purchasing system;
- (e) the names of the economic operators which were unsuccessful in the circumstances referred to in regulation 15(11), 16(7), 16(8), 17(9), 17(10), 18(10), 18(11), 20(8) or 30 and the reasons why they were unsuccessful;
 - (f) if known to the contracting authority, the parts of the contract or framework agreement that the economic operator to which the contract has been awarded, or with which the framework agreement has been concluded, intends to sub-contract to another economic operator;
 - (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 13 or 14 constituted grounds for using that procedure;
 - (h) in the case of a contracting authority which used the competitive dialogue procedure, details of the circumstances which constituted grounds for using that procedure in accordance with regulation 18(2); and
 - (i) where a contracting authority has abandoned a contract award procedure, the conclusion of a framework agreement or the establishment of a dynamic purchasing system, the reasons why the contracting authority has decided not to award the contract, to conclude the framework agreement or to establish the dynamic purchasing system as the case may be.

(15) A contracting authority shall keep appropriate information to document the progress of contract award procedures conducted by electronic means.

(16) If the Commission requests a report containing the information specified in paragraph (14), the contracting authority shall send a written report containing that information, or the main features of it, to the Office of Government Commerce for onward transmission to the Commission.

Definitions

(17) For the purposes of this regulation-

- (a) “candidate” means an economic operator (other than a tenderer) which applied-
 - (i) to be included amongst the economic operators to be selected to tender or to negotiate the contract, or
 - (ii) to be a party to the framework agreement,but does not include any economic operator which has been informed of the rejection of its application, and the reasons for it; and
- (b) “tenderer” means an economic operator which submitted an offer

Questions and Comments

Questions on this policy should be addressed in the first instance to the OGC Service Desk on **0845 000 4999** or at servicedesk@ogc.gsi.gov.uk