

Regulation 57(5)

“Where information or documentation to be submitted by an economic operator is or appears to be incomplete or erroneous, or where specific documents are missing, a contracting authority may request the economic operator concerned to submit, supplement, clarify or complete the relevant information or documentation within an appropriate time limit, provided that such requests are made in full compliance with the principles of equal treatment and transparency.”

The objective at the clarification stage is to clarify the tenders as submitted i.e. it is contact between you and the bidder(s) purely to clarify aspects of the tender which are unclear or abnormal.

When is it necessary?

Clarifications may become necessary if:

- aspects of a bid that are unclear or contain minor errors;
- certain aspects of the bid seem ambiguous;
- it might be prudent to request clarification.

What is forbidden?

- Negotiations in relation to price
- Clarifications regarding essential aspects of the tender
- Other areas where bid improvements may be possible.

When can a contracting authority clarify?

In principle, tenders cannot be amended after submission either at the request of the contracting authority or at the request of the tenderers. However, the Public Contracts (Scotland) Regulations 2015 state that clarification “must not involve changes to the essential aspects of the tender or the procurement”.

The authority must treat tenderers equally and fairly. The request for clarification cannot appear unduly to have favoured or disadvantaged the tenderer to whom it was addressed, once the procedure for selection of tenders has been completed and in light of its outcome.

Before making a request for clarification, authority must have looked at all of the tenders.

A request for clarification cannot make up for the lack of a document or information which was required by the tender documents.

Is there ever a duty to clarify?

- Only in exceptional circumstances;
- Where tender is ambiguous;
- Where there is a “simple clerical error”.

If you require any further information, please get in touch with procurement@sds.co.uk