



Procurement Reform (Scotland) Act 2014

2014 asp 12

PART 2

GENERAL DUTIES AND PROCUREMENT STRATEGIES

General duties

8 General duties

- (1) A contracting authority must, in carrying out a regulated procurement—
 - (a) treat relevant economic operators equally and without discrimination,
 - (b) act in a transparent and proportionate manner.
- (2) A contracting authority must also comply with the sustainable procurement duty.
- (3) However, a contracting authority must not do anything in pursuance of subsection (2) that would conflict with its duty under subsection (1).
- (4) A relevant economic operator is an economic operator who is a national of, or is established in—
 - (a) a member State, or
 - (b) Iceland, Liechtenstein or Norway.
- (5) Subsection (1) does not apply in relation to an EU-regulated procurement.

9 Sustainable procurement duty

- (1) For the purposes of this Act, the sustainable procurement duty is the duty of a contracting authority—
 - (a) before carrying out a regulated procurement, to consider how in conducting the procurement process it can—
 - (i) improve the economic, social, and environmental wellbeing of the authority's area,
 - (ii) facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses in the process, and
 - (iii) promote innovation, and

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- (b) in carrying out the procurement, to act with a view to securing such improvements identified as a result of paragraph (a)(i).
- (2) The contracting authority must consider under subsection (1) only matters that are relevant to what is proposed to be procured and, in doing so, consider the extent to which it is proportionate in all the circumstances to take those matters into account.
- (3) In this section—
 - “small and medium enterprises” means businesses with not more than 250 employees,
 - “third sector bodies” means organisations (other than bodies established under an enactment) that exist wholly or mainly to provide benefits for society or the environment.
- (4) In this section, references to the wellbeing of the authority’s area include, in particular, reducing inequality in the area.

10 Guidance on sustainable procurement duty

- (1) The Scottish Ministers may publish guidance on the sustainable procurement duty.
- (2) Contracting authorities must have regard to any guidance published under this section.
- (3) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

11 Supported businesses

- (1) Despite section 8, a contracting authority may restrict participation in a regulated procurement (other than an EU-regulated procurement) to supported businesses only.
- (2) Where a contracting authority restricts participation under subsection (1), it must state that fact in the contract notice.
- (3) For the purposes of this Act, a “supported business” is an economic operator who operates a supported business, supported employment programme or supported factory within the meaning of regulation 7 of the Public Contracts Regulations.

12 Contracts for health or social care services

- (1) Despite section 8, a contracting authority may award a contract for a health or social care service without seeking offers in relation to the proposed contract.
- (2) In relation to a regulated procurement where, by virtue of subsection (1), a contracting authority does not seek offers, section 23(1) does not apply.
- (3) The Scottish Ministers may by regulations make provision specifying what is a health or social care service for the purposes of subsection (1) and section 13(1).

13 Guidance on procurements for health or social care services

- (1) The Scottish Ministers must publish guidance on the carrying out of regulated procurements relating to contracts for health or social care services.
- (2) Contracting authorities must have regard to any guidance published under this section.

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- (3) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

14 Other circumstances in which contract can be awarded without competition

- (1) The Scottish Ministers may by regulations specify circumstances in which a contracting authority may, despite section 8, award a regulated contract without seeking offers in relation to the proposed contract.
- (2) In relation to a regulated procurement where, by virtue of regulations made under subsection (1), a contracting authority does not seek offers, section 23(1) does not apply.