
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 88

The Public Contracts (Scotland) Regulations 2012

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Contracts (Scotland) Regulations 2012 and come into force on 1st May 2012.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) in these Regulations—

“buyer profile” means a page on the internet set up by a contracting authority containing one or more of the following: prior information notices, information on ongoing invitations to tender, prospective and concluded contracts, cancelled procedures and any useful general information such as a contact point, a telephone number, a facsimile number, a postal address or an e-mail address;

“candidate” means an economic operator (other than a tenderer) which applied to be amongst the economic operators to be selected to tender for or to negotiate a contract or framework agreement, or applied to be included amongst the economic operators to be selected to participate in a dialogue in relation to a contract or framework agreement;

“candidate concerned” means a candidate which has not been informed that they have been unsuccessful;

“carrying out” in relation to a work or works means the construction or the design and construction of that work or those works;

“central purchasing body” means a contracting authority which—

- (a) acquires goods or services intended for one or more contracting authorities;
- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities;

“the Commission” means the European Commission;

“[Commission Regulation \(EC\) No 1564/2005](#)” means Commission Regulation (EC) No 1564/2005 of 7th September 2005 establishing standard forms for the publication of notices in the framework of public procurement procedures pursuant to Directives [2004/17/EC](#) and [2004/18/EC](#) of the European Parliament and of the Council⁽¹⁾ as amended by

(1) OJ L 257, 1.10.05, p.1. The annex to [Commission Regulation \(EC\) No 1564/2005](#) was amended by Commission Regulation [\(EC\) 1150/2009](#), OJ L 313, 29.11.2009, p.3.

[Commission Regulation \(EC\) No 1792/2006](#) of 23rd October 2006 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement of persons, competition policy, agriculture (veterinary and phytosanitary legislation), fisheries, transport policy, taxation, statistics, social policy and employment, environment, customs union, and external relations by reason of the accession of Bulgaria and Romania⁽²⁾ and as amended from time to time;

“Common Procurement Vocabulary” means the reference nomenclature applicable to public contracts as adopted by Regulation [\(EC\) No 2195/2002](#) of 5th November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary as amended by Commission regulation (EC) No 213/2008 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives [2004/17/EC](#) and [2004/18/EC](#) of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV⁽³⁾;

“competitive dialogue procedure” means a procedure—

- (a) in which any economic operator may make a request to participate; and
- (b) whereby a contracting authority conducts a dialogue with the economic operators admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the economic operators chosen by the contracting authority are invited to tender;

“concessionaire” means a person who has entered into a public works concession contract with a contracting authority;

“contract documents” means the invitation to tender for or to negotiate a contract, the descriptive document (if any), the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the contracting authority and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto;

“contract notice” means, except in regulation 52, a notice sent to the Official Journal in accordance with these Regulations;

“contracting authority” has the meaning given to it by regulation 3;

“contractor” means a person who offers on the market work or works and—

- (a) who sought, who seeks, or would have wished, to be the person to whom a public works contract is awarded; and
- (b) who is a national of a relevant State or established in a relevant State

“CPC” means Central Product Classification of the United Nations⁽⁴⁾;

“CPV” means Common Procurement Vocabulary;

“design contest” means a competition, particularly in the fields of planning, architecture, civil engineering and data processing—

- (a) which is conducted by or on behalf of a contracting authority and in which that contracting authority invites the entry by economic operators of plans and designs;
- (b) under the rules of which the plans or designs entered will be judged by a jury;
- (c) under which prizes may or may not be awarded; and
- (d) which enables the contracting authority to acquire the use or ownership of plans or designs selected by the jury;

(2) OJ L 362, 20.12.2006, p.1.

(3) OJ L 74, 15.3.2008, p.1.

(4) CPC Version 2 (December 2008). Further information may be obtained from the United Nations website at <http://unstats.un.org/unsd/cr/registry/cpc-2.asp>.

“disabled person” means any person recognised as disabled within the meaning of the Equality Act 2010⁽⁵⁾;

“disability” has the same meaning as in the Equality Act 2010;

“dynamic purchasing system” means a wholly electronic system of limited duration which is—

- (a) established by a contracting authority to purchase commonly used goods, work, works or services; and
- (b) open throughout its duration for the admission of economic operators which—
 - (i) satisfy the selection criteria specified by the contracting authority; and
 - (ii) submit an indicative tender to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person;

“economic operator” has the meaning given to it by regulation 4;

“electronic auction” means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which—

- (a) takes place after the initial evaluation of tenders; and
- (b) enables tenders to be ranked using automatic evaluation methods;

“electronic means” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“established”, unless the context otherwise requires, has the same meaning as in the EU Treaties;

“European standard” has the meaning given to it in regulation 9(1);

“financial year” unless the context otherwise requires, means the period of 12 months ending on the date in any year in respect of which the accounts of any person are prepared;

“framework agreement” means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies;

“goods” includes electricity, substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under a public supply contract and any ship, aircraft or vehicle;

“government department” includes a Northern Ireland department or the head of such department;

“Government Procurement Agreement” means the Agreement on Government Procurement between certain parties to the World Trade Organisation (WTO) Agreement signed in Marrakesh on 15th April 1994⁽⁶⁾;

“GPA” means the Government Procurement Agreement;

“indicative tender” means a tender prepared by an economic operator seeking admission to a dynamic purchasing system which sets out the terms on which it would be prepared to enter

(5) 2010 c.15.

(6) Cmnd 2575. As at 1st January 2012, parties to the Government Procurement Agreement other than member States were Armenia, Aruba, Canada, Chinese Taipei, Hong Kong China, Iceland, Israel, Japan, Republic of Korea, Liechtenstein, Norway, Singapore, Switzerland and the United States of America.

into a contract with a contracting authority should that contracting authority propose to award a contract under the system;

“international standard” has the meaning given to it in regulation 9(1);

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;

“national of a relevant State” means, in the case of a person who is not an individual, a person formed in accordance with the laws of a relevant State and which has its registered office, central administration or principal place of business in a relevant State;

“negotiated procedure” means a procedure leading to the award of a contract whereby the contracting authority negotiates the terms of the contract with one or more economic operators selected by it;

“Official Journal” means the Official Journal of the European Union;

“open procedure” means a procedure leading to the award of a contract whereby all interested economic operators may tender for the contract;

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 11;

“public contract” means a public services contract, a public supply contract or a public works contract;

“Public Sector Directive” means Directive [2004/18/EC](#) of the European Parliament and of the Council of 31st March 2004 in the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts, as amended from time to time(7);

“public services contract” means a contract, in writing, for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services but does not include—

- (a) a public works contract; or
- (b) a public supply contract,

but a contract for both goods and services is considered to be a public services contract if the value attributable to those services exceeds that of the goods covered by the contract and a contract for services which includes activities specified in Schedule 2 that are only incidental to the principal object of the contract is considered to be a public services contract.

“public supply contract” means a contract, in writing, for consideration (whatever the nature of the consideration)—

- (a) for the purchase of goods by a contracting authority (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event), or
- (b) for the hire of goods by a contracting authority (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not); and for any siting or installation of those goods, but where under such a contract services are also to be provided, the contract is only a public supply contract where the value of the consideration attributable to the goods and any siting or installation of the goods is equal to or greater than the value attributable to the services;

“public telecommunications services” means telecommunications services the provision of which the relevant States have specifically assigned, in particular, to one or more telecommunications entities;

(7) OJ L 134, 30.4.04, p.114.

“public works concession contract” means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract;

“public works contract” means a contract, in writing, for consideration (whatever the nature of the consideration)—

- (a) for the carrying out of a work or works for a contracting authority, or
- (b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements;

“relevant standstill period” means—

- (a) where the notice referred to in regulation 32(1) or 49(9)(a) is sent to all tenderers and all candidates concerned (if any) by facsimile or by electronic means, 10 days from the date on which the last notice is sent to those economic operators; or
- (b) where any such notice is sent to any tenderers or candidates concerned only by other means, 15 days from the date on which the last notice was sent to those economic operators;

“relevant State” has the meaning given to it by regulation 4(4);

“restricted procedure” means a procedure leading to the award of a contract whereby only economic operators selected by the contracting authority may submit tenders for the contract;

“Schedule 1 entity” means an entity specified in Schedule 1 pursuant to its inclusion in the list of central government bodies in Annex I to the GPA, and for which these Regulations make particular provision;

“services concession contract” means a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract;

“services provider” means a person who offers on the market, services and—

- (a) who either sought, seeks, or would have wished—
 - (i) to be the person to whom a public services contract is awarded, or
 - (ii) to participate in a design contest, and
- (b) who is a national of a relevant State or established in a relevant State;

“ship” includes any boat and other description of a vessel used in navigation;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of vapour;

“supplier” means a person who offers on the market goods for purchase or hire and—

- (a) who either sought, seeks, or would have wished, to be the person to whom a public supply contract is awarded, and
- (b) who is a national of a relevant State or established in a relevant State;

“telecommunications services” means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television;

“tenderer” means an economic operator which has submitted an offer to perform a contract or to be party to a framework agreement, or participated in a dialogue in relation to a contract or framework agreement;

“tenderer concerned” means a tenderer which—

- (a) has not been informed that they have been excluded from the competition; or

- (b) has been informed that they have been excluded from the competition and where—
- (i) that exclusion is not prevented from being the subject of proceedings under Part 9 by virtue of regulation 47(6)(b); and
 - (ii) no such proceedings have been brought, or such proceedings have been brought and it has not been determined that the exclusion was lawful;

“TFEU” means the Treaty on the Functioning of the European Union⁽⁸⁾;

“Utilities Directive” means Directive 2004/17/EC of the European Parliament and of the Council of 31st March 2004 co-ordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, as amended from time to time⁽⁹⁾;

“work” means the outcome of any works which is sufficient of itself to fulfil an economic and technical function;

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971⁽¹⁰⁾;

“works” means any of the activities specified in Schedule 2;

“written” or “in writing” means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and it may include information transmitted and stored by electronic means; and

“year” means a calendar year.

(2) In these Regulations references to Article 7, 56 or 67 are references to Article 7, 56 or, as the case may be, 67 of the Public Sector Directive as amended from time to time.

(3) In these Regulations, unless the context otherwise requires, any reference to a numbered Part, regulation, paragraph or Schedule is a reference to the Part, regulation, paragraph or Schedule bearing that number in these Regulations.

(4) Subject to paragraph (5), in these Regulations—

- (a) “a Part A services contract” is a contract under which services specified in Part A of Schedule 3 are to be provided;
- (b) “a Part B services contract” is a contract under which services specified in Part B of Schedule 3 are to be provided.

(5) Where services specified in both Parts A and B of Schedule 3 are to be provided under a single contract, then the contract is treated as—

- (a) a Part A services contract if the value of the consideration attributable to the services specified in Part A is greater than that attributable to those specified in Part B; and
- (b) a Part B services contract if the value of the consideration attributable to the services specified in Part B is equal to or greater than that attributable to those specified in Part A.

(6) Except in regulation 47(7)(b), where these Regulations refer to a period of time—

- (a) where the period follows an action taken, the day on which the action is taken is not counted in the calculation of the period; and
- (b) where the last day of the period is not a working day, the period is extended to include the next working day.

Contracting authorities

3.—(1) For the purposes of these Regulations each of the following is a contracting authority—

⁽⁸⁾ OJ C 115, 9.5.2008, p.47.

⁽⁹⁾ OJ L 134, 30.4.04, p.1.

⁽¹⁰⁾ 1971 c.80. There are amendments to this Act which are not relevant to these Regulations.

- (a) a Minister of the Crown;
- (b) a government department;
- (c) the House of Commons;
- (d) the House of Lords;
- (e) the Scottish Ministers;
- (f) the Scottish Parliamentary Corporate Body;
- (g) the National Assembly for Wales;
- (h) the Northern Ireland Assembly Commission;
- (i) a local authority, which for the purposes of these Regulations, means—
 - (i) a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹¹⁾;
 - (ii) a county council, a district council, a London borough council, a parish council, a community council, the Council of the Isles of Scilly, a county borough council or the Common Council of the City of London in its capacity as local authority or police authority; or
 - (iii) a district council within the meaning of the Local Government Act (Northern Ireland) 1972⁽¹²⁾;
- (j) a fire authority constituted by a combination scheme or administration scheme under the Fire Services Act 1947⁽¹³⁾ and continued under section 5 of the Fire (Scotland) Act 2005⁽¹⁴⁾;
- (k) a fire and rescue authority—
 - (i) within the meaning of section 1 of the Fire and Rescue Services Act 2004⁽¹⁵⁾;
 - (ii) constituted by a scheme under section 2 of that Act;
 - (iii) to which a scheme under section 4 of that Act applies; or
 - (iv) within the meaning of section 1 of the Fire (Scotland) Act 2005;
- (l) a joint fire board constituted by an administration scheme under section 147 of the Local Government (Scotland) Act 1973⁽¹⁶⁾ and continued under section 5 of the Fire (Scotland) Act 2005;
- (m) a joint fire and rescue board within the meaning of section 2 of the Fire (Scotland) Act 2005;
- (n) the Fire Authority for Northern Ireland;
- (o) a police authority established under section 3 of the Police Act 1996⁽¹⁷⁾;
- (p) the Metropolitan Police Authority established under section 5B of the Police Act 1996⁽¹⁸⁾;
- (q) a police authority established under section 2 of the Police (Scotland) Act 1967⁽¹⁹⁾;

(11) 1994 c.39.

(12) 1972 c.9 (N.I.).

(13) 1947 c.41. This Act, except for sections 26 to 27A, was repealed by section 89(2) of, and schedule 4 to, the Fire (Scotland) Act 2005. Existing fire authorities constituted under a combination scheme under the Fire Services Act 1947 continue to have effect by virtue of section 5 of the Fire (Scotland) Act 2005.

(14) 2005 asp 5.

(15) 2004 c.21.

(16) 1973 c.65. Section 147 of this Act was repealed by section 89(2) of, and schedule 4 to, the Fire (Scotland) Act 2005. Existing administration schemes under section 147 continue to have effect by virtue of section 5 of the Fire (Scotland) Act 2005.

(17) 1996 c.16.

(18) Section 5B of the Police Act 1996 was inserted by the Greater London Authority Act 1999 (c.29).

(19) 1967 c.77.

- (r) a joint police board constituted by an amalgamation scheme made or approved under section 21B of the Police (Scotland) Act 1967⁽²⁰⁾;
- (s) the Northern Ireland Policing Board;
- (t) an authority established under section 10 of the Local Government Act 1985⁽²¹⁾;
- (u) a joint authority established by Part IV of the Local Government Act 1985;
- (v) any body established in accordance with an order under section 67 of the Local Government Act 1985;
- (w) a joint board established by order under the Local Government etc. (Scotland) Act 1994⁽²²⁾;
- (x) the Broads Authority;
- (y) any joint board, the constituent members of which consist of any of the bodies specified in paragraphs (i),(j), (l), (o), (p), (q), (r), (s), (t), (u), (v) and (w);
- (z) a National Park authority established by an Order under section 63 of the Environment Act 1995⁽²³⁾;
- (aa) a National Park authority established by an Order under section 6 of the National Parks (Scotland) Act 2000⁽²⁴⁾;
- (bb) a corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and—
 - (i) financed wholly or mainly by another contracting authority;
 - (ii) subject to management supervision by another contracting authority; or
 - (iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by another contracting authority;
- (cc) an association of, or formed by, one or more of the above; and
- (dd) to the extent not specified in sub-paragraphs (a) to (aa), an entity specified in Schedule 1.

(2) Where an entity specified in paragraph (1) does not have the capacity to enter into a contract, the contracting authority in relation to that entity is a person whose function it is to enter into contracts for that entity.

Economic operators

4.—(1) In these Regulations, an “economic operator” means a contractor, a supplier or a services provider.

(2) When these Regulations apply, a contracting authority must not treat a person who is not a national of a relevant State or is not established in a relevant State more favourably than one who is.

(3) A contracting authority must—

- (a) treat economic operators equally and without discrimination; and
- (b) act in a transparent and proportionate manner.

(4) In these Regulations a relevant State is a Member State or a State listed in column 1 of Schedule 4; the agreements with the European Union by which the provisions in relation to public

(20) 1967 c.77. Section 21B was inserted by the Local Government etc. (Scotland) Act 1994 (c.39) section 34.

(21) 1985 c.51.

(22) 1994 c.39.

(23) 1995 c.25.

(24) 2000 asp 10.

procurement are extended to those States are specified in column 2 of that Schedule and the statutory provision designating them as EU Treaties under section 1(3) of the European Communities Act 1972⁽²⁵⁾ are specified in column 3 to that Schedule.

Application

5.—(1) Subject to paragraph (3), these Regulations apply whenever a contracting authority seeks offers in relation to a proposed public supply contract, public works contract, Part A services contract, framework agreement or dynamic purchasing system other than a contract, framework agreement or dynamic purchasing system referred to in paragraph (2) or excluded from the application of these Regulations by regulation 6 or 8.

(2) Whenever a contracting authority seeks offers in relation to a proposed Part B services contract or a framework agreement or dynamic purchasing system in respect of which only Part B service contracts can be based on or awarded, other than one excluded by virtue of regulation 6 or 8—

- (a) Parts 1, 9 and 10 apply; and
- (b) the following provisions in Parts 2 to 8 apply—
 - (i) regulation 9 (technical specifications in the contract documents);
 - (ii) regulation 31 (contract award notice);
 - (iii) regulation 40(2) (statistical and other reports);
 - (iv) regulation 41 (provision of reports); and
 - (v) regulation 42 (publication of notices).

(3) In these Regulations, a reference to a public works contract does not include a public works concession contract except in—

- (a) Parts 1, 9 and 10; and
- (b) the following provisions in Parts 6, 7 and 8—
 - (i) regulation 34 (subsidised public works contracts and public services contracts);
 - (ii) regulation 36 (public works concession contracts);
 - (iii) regulation 37 (sub-contracting the work or works to be carried out under a public works concession contract);
 - (iv) regulation 39 (conditions for performance of contracts);
 - (v) regulation 41 (provision of reports);
 - (vi) regulation 42 (publication of notices);
 - (vii) regulation 43 (confidentiality of information);
 - (viii) regulation 44 (means of communication);
 - (ix) regulation 45 (sub-contracting); and
 - (x) regulation 46 (public service bodies).

General exclusions

6.—(1) These Regulations do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system where the contracting authority is a utility within the meaning of regulation 3 of the Utilities Contracts (Scotland) Regulations 2012⁽²⁶⁾ and—

⁽²⁵⁾ 1972 c.68.

⁽²⁶⁾ S.S.I. 2012/89.

- (a) that contract is for the purposes of carrying out an activity listed in any Part of Schedule 1 to those Regulations in which the utility is specified;
 - (b) that contract is for the provision of bus services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the utility;
 - (c) that contract is for the purpose of acquiring goods, work, works or services in order to sell, hire or provide them to another person unless the utility has a special or exclusive right to sell, hire or provide such goods, work, works or services or other persons are not free to sell, hire or provide them under the same conditions;
 - (d) that contract is for the purchase of water, where that utility is engaged in the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of drinking water or the supply of drinking water to such networks;
 - (e) that contract is for the supply of energy or of fuels for the production of energy, where that utility is engaged in—
 - (i) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat or the supply of gas or heat to such networks;
 - (ii) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks; or
 - (iii) exploring for or extracting oil, gas, coal or other solid fuels; or
 - (f) where that utility is engaged in an activity excluded from the Utilities Contract (Scotland) Regulations 2012 by virtue of regulation 9 of those Regulations.
- (2) These Regulations do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system—
- (a) where the principal purpose of the contract is to permit the contracting authority to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services;
 - (b) which is classified as secret or where the performance of the contract must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the essential interests of the security of the United Kingdom require it;
 - (c) where Article 346 of the TFEU applies to that public contract, framework agreement or dynamic purchasing system;
 - (d) where different procedures govern the procedures leading to the award of the contract and it is to be entered into in accordance with—
 - (i) an international agreement concluded in conformity with the TFEU to which the United Kingdom and a State which is not a relevant State are parties and it relates to goods or the carrying out of a work or works or the provision of services intended for the joint implementation or exploitation of a project related to that agreement;
 - (ii) an international agreement relating to the stationing of troops and concerning the undertakings of a relevant State or a state which is not a relevant State; or
 - (iii) the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members;

- (e) for the acquisition of land, including existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- (f) for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters or for the purchase of broadcasting time;
- (g) for arbitration or conciliation services;
- (h) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments in particular transactions by the contracting authorities to raise money or capital;
- (i) for central bank services;
- (j) for employment and other contracts of service;
- (k) for research and development services unless—
 - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs; and
 - (ii) the services are to be wholly paid for by the contracting authority;
- (l) under which services are to be provided by a contracting authority, or by a person which is a contracting authority in another relevant State for the purposes of the Public Sector Directive, because that contracting authority or person has an exclusive right—
 - (i) to provide the services; or
 - (ii) which is necessary for the provision of the servicesin accordance with any published law, regulation or administrative provision, which is compatible with the TFEU;
- (m) which is a services concession contract awarded by a contracting authority, subject to the application of regulation 46; or
- (n) where—
 - (i) the Defence and Security Public Contracts Regulations 2011(27) apply; or
 - (ii) the application of those Regulations is excluded by regulation 9 (thresholds) or 7 (general exclusions) of those Regulations.

Reserved contracts

7.—(1) In this regulation—

“supported business” means a service where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market;

“supported employment programme” means a scheme under which work is provided for disabled persons and where more than 50% of the workers so supported are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market; and

“supported factory” means an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market.

(2) A contracting authority may reserve the right to participate in a public contract award procedure, framework agreement or dynamic purchasing system to economic operators which operate supported businesses, supported employment programmes or supported factories.

(3) Where a contracting authority has reserved the right to participate in a public contract, framework agreement or dynamic purchasing system, in accordance with paragraph (2), it must follow the contract award procedures set out in these Regulations.

(4) When seeking offers in relation to a public contract, a framework agreement or dynamic purchasing system, a contracting authority must specify in the contract notice if it is using the approach referred to in paragraph (2).

Thresholds

8.—(1) These Regulations, except paragraph (21) of this regulation, do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system, where the estimated value of the contract (net of value added tax) at the relevant time is less than the relevant threshold.

(2) For the purposes of paragraph (1), the relevant threshold is the amount set out in Article 7(c) in the case of a public works contract and a public works contract subsidised as referred to in regulation 34.

(3) Subject to paragraph (4), the relevant threshold for the purposes of paragraph (1) in the case of a Part A public services contract is—

- (a) the amount set out in Article 7(a) where offers are sought by Schedule 1 entities; and
- (b) the amount set out in Article 7(b) where offers are sought by any other contracting authority.

(4) For the purposes of paragraph (1), the relevant threshold is the amount set out in Article 7(b) in the case of a public services contract which is—

- (a) subsidised as referred to in regulation 34;
- (b) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1 and 64228200-2 within category 5 of Part A of Schedule 3;
- (c) for research and development services specified in category 8 of Part A of Schedule 3; or
- (d) a Part B services contract.

(5) For the purposes of paragraph (1), the relevant threshold in the case of a public supply contract is—

- (a) the amount set out in Article 7(a) where offers are sought by—
 - (i) Schedule 1 entities; and
 - (ii) the Secretary of State for Defence, but only in relation to a contract for the purchase or hire of goods specified in Schedule 5; and
- (b) the amount set out in Article 7(b) in relation to all other contracts.

(6) The value in pounds sterling of any amount expressed in these Regulations in euro must be calculated by reference to the rate for the time being applying for the purposes of the Public Sector Directive as published from time to time in the Official Journal.

(7) For the purposes of paragraph (1), the estimated value of a public contract is the value of the total consideration payable, net of value added tax (calculated in accordance with this regulation), which the contracting authority expects to be payable under the contract.

(8) In determining the value of the total consideration which the contracting authority expects to be payable under a public contract it must, where appropriate, take account of—

- (a) any form of option;
- (b) any renewal of the contract;

- (c) any prize or payment awarded by the contracting authority to the economic operator;
- (d) the premium payable and other forms of remuneration for insurance services;
- (e) fees, commission, interest or other forms of remuneration payable for banking and other financial services; and
- (f) fees, commission or other forms of remuneration payable for design services.

(9) For the purposes of paragraph (1), the estimated value of a public supply contract for the hire of goods is—

- (a) the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is of fixed duration; or
- (b) the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into.

(10) For the purposes of paragraph (1), the estimated value of a public services contract which does not indicate a total price is—

- (a) the aggregate of the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or
- (b) the value of the consideration which the contracting authority expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period.

(11) Subject to paragraphs (12) and (15), where a contracting authority has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of paragraph (1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.

(12) Paragraph (11) does not apply to any contract (unless the contracting authority chooses to apply that paragraph to a contract) if the contract has an estimated value of less than—

- (a) 80,000 euro for a public services contract or a public supply contract; or
- (b) 1,000,000 euro for a public works contract;

and the aggregate value of that contract and any other such contract is less than 20% of the aggregate value of the consideration which the contracting authority has given or expects to be payable under all the contracts entered into or to be entered into to fulfil the single requirement for goods, services or for the carrying out of work or works.

(13) Subject to paragraph (15), where a contracting authority has a requirement over a period for goods or services and for that purpose enters into—

- (a) a series of contracts, or
- (b) a contract which under its terms is renewable,

the estimated value for the purposes of paragraph (1) of the contract is the amount calculated under paragraph (14).

(14) The contracting authority must calculate the amount referred to in paragraph (13) either—

- (a) by taking the aggregate of the value of the consideration payable under the contracts which—
 - (i) have similar characteristics; and
 - (ii) are for the same type of goods or services,

during the last financial year of the contracting authority ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods to be purchased or

hired or services to be provided in the period of 12 months commencing with the relevant time; or

- (b) by estimating the aggregate of the value of the consideration which the contracting authority expects to be payable under contracts which have similar characteristics, and which are for the same type of goods or services during—
 - (i) in the case of public supply contracts, the period of 12 months from the first date of the delivery of the goods to be purchased or hired, or in the case of public services contracts, from the first date on which the services will be performed; or
 - (ii) the financial year, where the end of that financial year is later than 12 months after the first date of the delivery of the goods or the first date on which the services will be performed, as the case may be.

(15) Notwithstanding paragraphs (11) and (13), in relation to a public supply contract or a public services contract, when the goods or services are required for the sole purpose of a discrete operational unit within the organisation of a contracting authority and—

- (a) the decision whether to procure those goods or services has been devolved to such a unit; and
- (b) that decision is taken independently of any other part of the contracting authority;

the valuation methods described in paragraphs (11) and (14) must be adapted by aggregating only the value of the consideration which was payable or which the contracting authority expects to be payable, as the case may be, under a public supply contract or a public services contract which was or is required for the sole purpose of that unit.

(16) Where a contracting authority intends to provide any goods to the economic operator awarded a public works contract for the purpose of carrying out that contract, the value of the consideration of the public works contract for the purposes of paragraphs (7) and (11) is taken to include the estimated value at the relevant time of those goods.

(17) The relevant threshold for the purposes of paragraph (1) for a framework agreement or dynamic purchasing system is the threshold for—

- (a) a public works contract, where the framework agreement or dynamic purchasing system relates to the carrying out of work or works;
- (b) a public services contract, where the framework agreement or dynamic purchasing system relates to the provision of services; or
- (c) a public supply contract, where the framework agreement or dynamic purchasing system relates to the purchase or hire of goods.

(18) The estimated value of a framework agreement or dynamic purchasing system is the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement or dynamic purchasing system.

(19) A contracting authority must not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of these Regulations to those contracts.

(20) The relevant time for the purposes of paragraphs (1), (14) and (16) means the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these Regulations.

(21) When a contracting authority proposes to award a public contract which has an estimated value for the purpose of paragraph (1) which is below the relevant threshold, or where a proposed public contract is otherwise exempt from the requirement for prior publication of a contract notice, the contracting authority must, if required by its general EU obligations, for the benefit of any potential economic operator, ensure a degree of advertising and follow a procedure leading to the

award of the contract which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency.