
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 1

GENERAL

Interpretation

2.—(1) In these Regulations—

“accelerated procedure” means any of the following—

- (a) an open procedure in which the contracting authority has exercised the power conferred by regulation 28(5) (open procedure) to fix a time limit for the receipt of tenders that is shorter than the minimum specified in regulation 28(3) (open procedure);
- (b) a restricted procedure in which the contracting authority has exercised the power conferred by regulation 29(11) (restricted procedure) to fix a time limit—
 - (i) for the receipt of requests to participate that is shorter than the minimum specified in regulation 29(3) (restricted procedure), or
 - (ii) for the receipt of tenders that is shorter than the minimum specified in regulation 29(6) (restricted procedure);
- (c) a competitive procedure with negotiation in which the contracting authority has exercised the power conferred by regulation 30(11) (competitive procedure with negotiation) to fix a time limit—
 - (i) for the receipt of requests to participate that is shorter than the minimum specified in regulation 30(5) (competitive procedure with negotiation); or
 - (ii) for the receipt of initial tenders that is shorter than the minimum specified in regulation 30(6) (competitive procedure with negotiation);

“ancillary purchasing activity” means activity consisting of the provision of support to a purchasing activity, in particular in any of the following forms—

- (a) technical infrastructure enabling a contracting authority to award a public contract or to conclude a framework agreement for works, supplies or services;
- (b) advice on the conduct or design of a public procurement procedure;
- (c) preparation and management of a procurement procedure for or on behalf of the contracting authority concerned;

“body governed by public law” means a body that has legal personality, is established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character and which—

- (a) is financed for the most part by the State, regional or local authorities, or by any other body governed by public law;
- (b) is subject to management supervision by any such authority or body; or

- (c) has an administrative, managerial or supervisory board more than half the members of which were appointed by any body referred to in sub-paragraph (a);

“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 that has sought an invitation to or has been invited to take part in any of the following—

- (i) a restricted procedure;
- (ii) a competitive procedure with negotiation;
- (iii) a negotiated procedure without prior publication;
- (iv) a competitive dialogue procedure;
- (v) an innovation partnership;

“central government authority” means the authorities listed in Schedule 1 and, where any such authority is succeeded by another authority which is itself a contracting authority, their successors;

“central purchasing body” means a contracting authority providing centralised purchasing activity whether or not including ancillary purchasing activities;

“centralised purchasing activity” means activity conducted on a permanent basis in one of the following forms—

- (a) the acquisition of supplies or services for contracting authorities;
- (b) the award of public contracts, or the conclusion of framework agreements for works, supplies or services intended for contracting authorities;

“commenced”, in relation to procurement, means—

- (a) where a contract notice has been sent to the Official Journal in order to invite offers or requests to be selected to tender for or to negotiate, or be selected to participate in a dialogue in relation to a contract, in respect of a proposed public contract, framework agreement or dynamic purchasing system;
- (b) in any case where there is no requirement to send a contract notice to the Official Journal, where the contracting authority has dispatched any form of advertisement seeking offers or expressions of interest in the proposed contract, framework agreement or dynamic purchasing system;
- (c) in any case where there is no such advertising, where the contracting authority has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) in response to an unsolicited expression of interest or offer in respect of a proposed contract, framework agreement or dynamic purchasing system; or
- (d) where the contracting authority has sent a notice to the Official Journal in order to hold a design contest;

“Commission” means the European Commission;

“common technical specification” means a technical specification in the field of information and communication technology laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council on European

standardisation, amending Council Directives [89/686/EEC](#) and [93/15/EEC](#) and Directives [94/9/EC](#), [94/25/EC](#), [95/16/EC](#), [97/23/EC](#), [98/34/EC](#), [2004/22/EC](#), [2007/23/EC](#), [2009/23/EC](#) and [2009/105/EC](#) of the European Parliament and of the Council and repealing Council Decision [87/95/EEC](#) and Decision No [1673/2006/EC](#) of the European Parliament and of the Council(1) as amended from time to time;

“contract award notice” means the notice referred to in regulation 51 (contract award notices) or, where relevant, regulation 75(3) (publication of notices);

“contract notice”, subject to regulation 98(6), means the notice referred to in regulation 50 (contract notices) or, where relevant, regulation 75(1)(a) (publication of notices);

“contracting authority” means the state, a regional or local authority, body governed by public law or association formed by one or more such authorities or bodies;

“contracting entity” has the meaning given by Article 4 of the Utilities Directive;

“CPV” means the Common Procurement Vocabulary as adopted by Regulation (EC) No [2195/2002](#) of the European Parliament and of the Council on the Common Procurement Vocabulary(2) as amended from time to time and “CPV Code” shall be construed accordingly;

“Defence and Security Regulations” means the Defence and Security Public Contracts Regulations 2011(3);

“design contest”, subject to regulations 98(6) and 99(5), means those procedures which enable the contracting authority to acquire, mainly in the fields of town and country planning, architecture, engineering or data processing, a plan or design selected by a jury after being out to competition with or without the award of prizes;

“Directive” means Directive 2014/24/EU of the European Parliament and of the Council on public procurement and repealing Directive [2004/18/EC](#)(4);

“disabled”, in relation to a person, means a disabled person within the meaning of the Equality Act 2010(5) and, in relation to a worker, means a disabled person who is a worker;

“dynamic purchasing system”, subject to regulations 98(6) and 99(5), means the system referred to in regulation 35 (dynamic purchasing systems);

“economic operator”, subject to regulation 99(5), means any person or public entity or group of such persons and/or entities including any temporary association of undertakings, which offers the execution of works and/or a work, the supply of products or the provision of services on the market;

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

“ESPD” means the European Single Procurement Document referred to in regulation 60(1) (European single procurement document: Use, content and form of the ESPD);

“European standard” means a standard adopted by a European standardisation organisation and made available to the general public;

“European Technical Assessment” means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the relevant European Assessment Document as defined in point 12 of Article 2 of Regulation (EU) No [305/2011](#) of the European Parliament and of the Council laying down harmonised conditions

(1) OJ L 316, 14.11.2012, p.1.

(2) OJ L 340, 16.12.2002, p.1, last amended by Commission Regulation (EC) No. [213/2008](#) (OJ L 74, 15.3.2008, p.1).

(3) [S.I. 2011/1848](#), amended by [S.S.I. 2012/88](#), [S.S.I. 2012/89](#) and [S.I. 2015/102](#).

(4) OJ L 94, 28.3.2014, p.65.

(5) [2010 c.15](#).

for the marketing of construction products and repealing Council Directive [89/106/EEC](#)(6) as amended from time to time;

“framework agreement”, subject to regulations 98(6) and 99(5), means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular terms with regard to price and, where appropriate, the quantity envisaged;

“GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended(7);

“innovation” means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method or a new organisational method in business practice, workplace organisation or external relations including with the purpose of helping to solve societal challenges or to support the Europe 2020 strategy(8) for smart, sustainable and inclusive growth;

“international standard” means a standard adopted by an international standardisation organisation and made available to the general public;

“joint entity” includes European groupings of territorial cooperation under Regulation [\(EC\) No 1082/2006](#) of the European Parliament and of the Council on a European grouping of territorial cooperation (9) and other entities established under EU law;

“label” means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

“label requirements” means the requirements to be met by the works, products, services, processes or procedures in question in order to obtain the label concerned;

“life cycle” means all consecutive or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

“main contractor” means an economic operator to which a contracting authority has awarded a public contract or framework agreement;

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

“national standard” means a standard adopted by a national standardisation organisation and made available to the general public;

“procurement” means the process leading to the award of a public contract or framework agreement or establishment of a dynamic purchasing system for the acquisition of works, supplies or services from an economic operator;

“procurement document” means any document produced or referred to by the contracting authority to describe or determine elements of the procurement, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

(6) OJ L 88, 4.4.2011, p.5, last amended by Commission Delegated Regulation (EU) No 574/2014 (OJ L 159, 28.5.2014, p.41).

(7) All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council Decision 2014/115/EU (OJ No L 68, 7.3.2014, p.1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p.2). In accordance with Article 3 of the Protocol, the Protocol has entered into force for the EU.

(8) European Commission COM(2010) 2020 3.3.2010.

(9) OJ L 210, 31.7.2006, p.19.

“public contract”, subject to regulation 98(6), means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as its object the execution of works, the supply of products or the provision of services;

“public service contract” means a public contract having as its object the provision of services not including those comprising a public works contract (except a subsidised public service contract);

“public supply contract” means a public contract having as its object the purchase, lease, rental or hire purchase, with or without an option to buy, of products which contract may include, as an incidental matter, siting and installation operations;

“public works contract” means a public contract having as its object one of the following—

- (a) the execution or the design and execution of works related to one of the activities within the meaning of Schedule 2;
- (b) the execution or the design and execution of a work;
- (c) the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work;

(except a subsidised public works contract);

“selection criteria” means, except in regulation 79 (rules on the organisation of design contests and the selection of participants), selection criteria set out by a contracting authority in accordance with regulation 59;

“standard” means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is an international standard, a European standard or a national standard;

“sub-central contracting authority” means a contracting authority which is not a central government authority;

“technical reference” means any deliverable produced by European standardisation bodies, other than European standards, according to procedures adapted to the development of market needs;

“technical specifications” means the matters referred to in regulation 43(1)(b) to (6);

“tenderer” means an economic operator that has submitted a tender;

“TFEU” means the Treaty on the Functioning of the European Union(10);

“Utilities Directive” means Directive 2014/25/EU of the European Parliament and of the Council on procurement entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC(11);

“a work” means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function; but “works” is to be interpreted in accordance with paragraph (2);

“working day” means a day other than a Saturday, Sunday or a bank holiday in Scotland within the meaning of the Banking and Financial Dealings Act 1971(12); and

“written” or “in writing” means any expression which can be read by a person, reproduced and subsequently communicated, including information transmitted and stored by electronic means.

(10) OJ C 326, 26.10.2012 p.47.

(11) OJ L 94, 28.3.2014, p.243.

(12) 1971 c.80.

(2) Unless the context otherwise requires, any expression used in both these Regulations and the Directive has the meaning that it bears in the Directive.

(3) The value in pounds sterling of any amount expressed in Euros in these Regulations, except in regulation 82, or in any of the provisions of the Directive mentioned in these Regulations shall be taken to be the value determined by the Commission in accordance with Article 6 of the Directive and published from time to time in the Official Journal.

(4) Except in regulation 88(4) (enforcement of duties through the courts), 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;
- (b) the period must include at least 2 working days; and
- (c) where the last day of the period is not a working day, the period is extended to include the next working day.

(5) In the interpretation of these Regulations, except where the context otherwise requires, reference to a “contracting authority” shall be deemed to include reference to a person undertaking a procurement subject to the application of these Regulations by virtue of regulation 14(1).