
STATUTORY INSTRUMENTS

2015 No. 102

The Public Contracts Regulations 2015

PART 4

MISCELLANEOUS OBLIGATIONS

CHAPTER 8

BELOW-THRESHOLD PROCUREMENTS

Scope of Chapter 8

109.—(1) Subject to paragraphs (2) and (5), this Chapter applies to procurements by contracting authorities with respect to public contracts where Part 2 does not apply because the estimated value of the procurement is less than the relevant threshold mentioned in regulation 5.

(2) This Chapter does not apply in any of the following cases:—

- (a) where Part 2 would not have applied even if the estimated value of the procurement had been equal to or greater than the relevant threshold mentioned in regulation 5;
- (b) where the contracting authority is a central government authority and the procurement has a value net of VAT estimated to be less than £10,000;
- (c) where the contracting authority is—
 - (i) a sub-central contracting authority or an NHS Trust, and
 - (ii) the procurement has a value net of VAT estimated to be less than £25,000;
- (d) the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽¹⁾.

(3) For the purposes of paragraph (2)(b) and (c) and regulation 111(2), the estimated value of the procurement shall be calculated on the basis set out in regulation 6(1) to (5), (7) to (10) and (16) to (19), but as if the reference to a call for competition in regulation 6(7) were a reference to the publication of information on Contracts Finder in accordance with regulation 110.

(4) A procurement shall not be subdivided with the effect of preventing it from falling within the scope of this Chapter, unless justified by objective reasons.

(5) Regulations 110 and 112 do not apply where the contracting authority is a maintained school or an Academy.

Publication of contract opportunities on Contracts Finder

110.—(1) Paragraph (2) applies where a contracting authority advertises a contract award opportunity.

(2) In those circumstances, the contracting authority shall publish information about the opportunity on Contracts Finder, regardless of what other means it uses to advertise the opportunity.

(3) Where a contracting authority is required by paragraph (2) to publish information on Contracts Finder, it shall do so within 24 hours of the time when it first advertises the contract award opportunity in any other way.

(4) A contracting authority may publish on Contracts Finder information about a contract award opportunity even if the contracting authority does not advertise the opportunity in any other way.

(5) For the purposes of this regulation—

- (a) a contracting authority advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open-ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract; and
- (b) accordingly, a contracting authority does not advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement), regardless of how it draws the opportunity to the attention of those economic operators.

(6) In this regulation, “contract award opportunity” means the opportunity to be awarded a public contract by a contracting authority, regardless of how specific the opportunity is.

(7) For example, advertising by means of techniques similar to prior information notices used to call for competition under Part 2 amounts to the advertising of contract award opportunities even though the specific contracts that may in due course be awarded within the scope of such procurements are not identified individually in the advertising.

(8) The information to be published on Contracts Finder shall include at least the following:—

- (a) the time by which any interested economic operator must respond if it wishes to be considered;
- (b) how and to whom such an economic operator is to respond; and
- (c) any other requirements for participating in the procurement.

(9) For the purposes of paragraph (8)(a), the time shall be such as to allow the economic operators a sufficient but not disproportionate period of time within which to respond.

(10) The contracting authority shall ensure that the information remains published on Contracts Finder until the time mentioned in paragraph (8)(a).

(11) Paragraph (10) does not apply where the procedure is, for any reason, abandoned before that time.

(12) Where a contracting authority publishes information on Contracts Finder under this regulation, the contracting authority shall—

- (a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant contract documents; and
- (b) specify in the information published on Contracts Finder the internet address at which those documents are accessible.

(13) But paragraph (12)(a) does not require a contracting authority to provide such access where the access cannot be offered for a relevant reason.

(14) In paragraph (13), “relevant reason” means any reason which, in accordance with regulation 53(3) and (4), would have applied if the procurement had been covered by Part 2 and the relevant contract documents had been procurement documents.

- (15) For the purposes of this regulation, a document is a relevant contract document if—
- (a) it contains information about the opportunity which goes beyond the information published on Contracts Finder, and
 - (b) that information is intended by the contracting authority to be taken into account by those responding to the advertisement.
- (16) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to—
- (a) the form and manner in which information is to be published on Contracts Finder;
 - (b) what is a sufficient but not disproportionate period of time for the purposes of paragraph (9).

Assessing suitability etc

- 111.**—(1) A contracting authority shall not include a pre-qualification stage in a procurement.
- (2) Where the relevant threshold for the purposes of regulation 109(1) is that mentioned in regulation (5)(1)(a) or (d), paragraph (1) of this regulation applies only if the estimated value of the procurement is less than the lower threshold mentioned in paragraph (3).
- (3) The lower threshold is the threshold mentioned in—
- (a) regulation 5(1)(b) where the contracting authority is a central government authority;
 - (b) regulation 5(1)(c) where the contracting authority is a sub-central contracting authority.
- (4) In paragraph (1), “pre-qualification stage” means a stage in the procurement process during which the contracting authority assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage of the process.
- (5) In any event, contracting authorities may ask candidates to answer suitability assessment questions only if each such question is—
- (a) relevant to the subject-matter of the procurement; and
 - (b) proportionate.
- (6) In paragraph (5), “suitability assessment question” means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.
- (7) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office, which may include guidance on how to establish and assess, without infringing paragraph (5), whether candidates meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.
- (8) Where a contracting authority conducts a procurement in a way which represents a reportable deviation from the guidance issued under paragraph (7), the contracting authority shall send to the Cabinet Office a report explaining the deviation.
- (9) For that purpose, something is a reportable deviation only if it falls within criteria laid down for that purpose in guidance issued under paragraph (7).
- (10) In this regulation, “candidate” means an economic operator that wishes to be considered for the award of a public contract.

Publication of information on Contracts Finder about contracts awarded

112.—(1) Where a public contract is awarded, the contracting authority shall, within a reasonable time, publish on Contracts Finder at least the following information:—

- (a) the name of the contractor;
- (b) the date on which the contract was entered into;
- (c) the value of the contract;
- (d) whether the contractor is a SME or VCSE.

(2) But the contracting authority may withhold information from publication where its release—

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

(3) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to—

- (a) the form and manner in which the information is to be published on Contracts Finder; and
- (b) what is a reasonable time for the purposes of paragraph (1).

(4) In paragraph (1)(d)—

“SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁽²⁾; and

“VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

(2) OJ No L 124, 20.5.2003, p.36.