



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2023 Rhif 506 (Cy. 76)

2023 No. 506 (W. 76)

**CAFFAEL CYHOEDDUS,
CYMRU**

**PUBLIC PROCUREMENT,
WALES**

**Rheoliadau Caffael Cyhoeddus
(Cytundebau Masnach Ryngwladol)
(Diwygio) (Cymru) 2023**

**The Public Procurement
(International Trade Agreements)
(Amendment) (Wales) Regulations
2023**

NODYN ESBONIADOL

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

Mae'r Rheoliadau hyn yn gwneud diwygiadau i reoliadau caffael cyhoeddus amrywiol yn y Deyrnas Unedig at ddiben rhoi dau Gytundeb Masnach Rydd y mae'r Deyrnas Unedig wedi ymrwymo iddynt ar waith, un ag Awstralia ("CMR y DU-Awstralia") a'r llall â Seland Newydd ("CMR y DU-Seland Newydd").

Mae'r diwygiadau a wneir gan y Rheoliadau hyn yn rhoi CMR y DU-Awstralia a CMR y DU-Seland Newydd ar waith, yn ogystal â gwneud tair set o ddiwygiadau sy'n gymwys yn gyffredinol o dan adran 1(2) o Ddeddf Masnach (Awstralia a Seland Newydd) 2023 (p. 9). Mae angen y diwygiadau hyn sy'n gymwys yn gyffredinol er mwyn sicrhau cydymffurfiaeth ag ymrwymadau a wneir yn CMR y DU-Awstralia.

Mae'r set gyntaf o ddiwygiadau sy'n gymwys yn gyffredinol yn cyflwyno'r rheol, pan na ellir amcangyfrif gwerth caffaeliad, fod y caffaeliad i'w drin fel pe bai ei werth wedi ei bennu ar y trothwy perthnasol ar gyfer y math hwnnw o gaffaeliad. Gwneir y diwygiadau hyn i Reoliadau Contractau Cyhoeddus 2015 (O.S. 2015/102) gan reoliad 2(3)(b), i Reoliadau Contractau Concesiwn 2016 (O.S. 2016/273) gan reoliad 3(3), ac i Reoliadau Contractau Cyfleustodau 2016 (O.S. 2016/274) gan reoliad 4(3)(b).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to various United Kingdom public procurement regulations for the purpose of implementing two Free Trade Agreements entered into by the United Kingdom, one with Australia (the "UK-Australia FTA") and the other with New Zealand (the "UK-New Zealand FTA").

The amendments made by these Regulations implement the UK-Australia FTA and the UK-New Zealand FTA, as well as making three sets of amendments of general application under section 1(2) of the Trade (Australia and New Zealand) Act 2023 (c. 9). These amendments of general application are required to ensure compliance with commitments made in the UK-Australia FTA.

The first set of amendments of general application introduce the rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement. These amendments are made to the Public Contracts Regulations 2015 (S.I. 2015/102) by regulation 2(3)(b), to the Concession Contracts Regulations 2016 (S.I. 2016/273) by regulation 3(3), and to the Utilities Contracts Regulations 2016 (S.I. 2016/274) by regulation 4(3)(b).

Yn achos Rheoliadau Contractau Cyhoeddus 2015 a Rheoliadau Contractau Cyfleustodau 2016, gwneir darpariaeth arbennig ar gyfer y sefyllfa pan na ellir amcangyfrif gwerth un neu ragor o lotiau. Mae rheoliad 2(3)(a) yn gwneud y diwygiad perthnasol i Reoliadau Contractau Cyhoeddus 2015 ac mae rheoliad 4(3)(a) yn gwneud y diwygiad perthnasol i Reoliadau Contractau Cyfleustodau 2016.

Mae'r ail set o ddiwygiadau sy'n gymwys yn gyffredinol yn dileu'r posibilrwydd o ddefnyddio hysbysiad gwybodaeth ymlaen llaw a hysbysiad dangosol cyfnodol, yn y drefn honno, fel yr alwad am gystadlueaeth. Gwneir y diwygiadau hyn i Reoliadau Contractau Cyhoeddus 2015 gan reoliad 2(2) a 2(5) i 2(25) ac i Reoliadau Contractau Cyfleustodau 2016 gan reoliad 4(2) a 4(5) i 4(22).

Mae'r drydedd set o ddiwygiadau sy'n gymwys yn gyffredinol yn gwahardd awdurdodau contractio a chyfleustodau rhag terfynu contractau mewn modd sy'n osgoi rhwymedigaethau yn CMR y DU-Awstralia. Gwneir y diwygiadau hyn i Reoliadau Contractau Cyhoeddus 2015 gan reoliad 2(4), i Reoliadau Contractau Consesiwn 2016 gan reoliad 3(2), ac i Reoliadau Contractau Cyfleustodau 2016 gan reoliad 4(4).

Mae rheoliad 5 o'r Rheoliadau hyn yn gwneud darpariaeth ar gyfer trefniadau trosiannol, drwy arfer y pŵer a roddir gan adran 2(1)(d) o Ddeddf Masnach (Awstralia a Seland Newydd) 2023.

Ystyriwyd Cod Ymarfer Gweinidogion Cymru ar gynnal Asesiadau Effaith Rheoleiddiol mewn perthynas â'r Rheoliadau hyn. O ganlyniad, ystyriwyd nad oedd yn angenrheidiol cynnal asesiad effaith rheoleiddiol o'r costau a'r manteision sy'n debygol o ddeillio o gydymffurfio â'r Rheoliadau hyn.

In the case of the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, special provision is made for the situation in which the value of one or more lots cannot be estimated. Regulation 2(3)(a) makes the relevant amendment to the Public Contracts Regulations 2015 and regulation 4(3)(a) makes the relevant amendment to the Utilities Contracts Regulations 2016.

The second set of amendments of general application remove the possibility of using a prior information notice and a periodic indicative notice, respectively, as the call for competition. These amendments are made to the Public Contracts Regulations 2015 by regulation 2(2) and 2(5) to 2(25) and to the Utilities Contracts Regulations 2016 by regulation 4(2) and 4(5) to 4(22).

The third set of amendments of general application prohibit contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA. These amendments are made to the Public Contracts Regulations 2015 by regulation 2(4), to the Concession Contracts Regulations 2016 by regulation 3(2), and to the Utilities Contracts Regulations 2016 by regulation 4(4).

Regulation 5 of these Regulations makes provision for transitional arrangements, in exercise of the power conferred by section 2(1)(d) of the Trade (Australia and New Zealand) Act 2023.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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CYMRU**

**PUBLIC PROCUREMENT,
WALES**

**Rheoliadau Caffael Cyhoeddus
(Cytundebau Masnach Ryngwladol)
(Diwygio) (Cymru) 2023**

**The Public Procurement
(International Trade Agreements)
(Amendment) (Wales) Regulations
2023**

Gwnaed 3 Mai 2023
Gosodwyd *gerbron* *Senedd*
Cymru 5 Mai 2023
Yn dod i rym 26 Mai 2023

Made 3 May 2023
Laid before Senedd Cymru 5 May 2023
Coming into force 26 May 2023

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn, drwy arfer y pwerau a roddir gan adrannau 1(1) a (2), 2(1)(b), (c) a (d) o Ddeddf Masnach (Awstralia a Seland Newydd) 2023(1).

The Welsh Ministers make these Regulations, in exercise of the powers conferred by sections 1(1) and (2), 2(1)(b), (c) and (d) of the Trade (Australia and New Zealand) Act 2023(1).

Enwi, cychwyn, cymhwyso a dehongli

Title, commencement, application and interpretation

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Caffael Cyhoeddus (Cytundebau Masnach Ryngwladol) (Diwygio) (Cymru) 2023.

1.—(1) These Regulations are called The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023.

(2) Daw'r Rheoliadau hyn i rym ar 26 Mai 2023.

(2) These Regulations come into force on 26 May 2023.

(3) Mae'r Rheoliadau hyn yn gymwys mewn perthynas ag awdurdodau Cymreig datganoledig.

(3) These Regulations apply in relation to devolved Welsh authorities.

(4) Yn y Rheoliad hwn, mae i "awdurdod Cymreig datganoledig" yr ystyr a roddir i "devolved Welsh authority" gan adran 157A o Ddeddf Llywodraeth Cymru 2006(2).

(4) In this Regulation, "devolved Welsh authority" has the meaning given by section 157A of the Government of Wales Act 2006(2).

(1) 2023 p. 9.

(2) 2006 p. 32. Mewnosodwyd adran 157A yn Neddf Llywodraeth Cymru 2006 gan adran 4(1) o Ddeddf Cymru 2017 (p. 4).

(1) 2023 c. 9.

(2) 2006 c. 32. Section 157A was inserted into the Government of Wales Act 2006 by the Wales Act 2017 (c. 4), section 4(1).

Diwygio Rheoliadau Contractau Cyhoeddus 2015

2.—(1) Mae Rheoliadau Contractau Cyhoeddus 2015(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 2 (diffiniadau), ym mharagraff (1)—

- (a) hepgorer y diffiniad o “invitation to confirm interest”;
- (b) yn y diffiniad o “procurement document”, hepgorer “the prior information notice where it is used as a means of calling for competition.”.

(3) Yn rheoliad 6 (dulliau o gyfrifo gwerth amcangyfrifedig caffaeliad)—

- (a) ym mharagraff (15A), hepgorer “that is not a devolved Welsh authority”;
- (b) ym mharagraff (20), hepgorer “that is not a devolved Welsh authority”.

(4) Yn rheoliad 18 (egwyddorion caffael), ym mharagraff (4), hepgorer “that are not devolved Welsh authorities”.

(5) Yn rheoliad 22 (rheolau sy’n gymwys i gyfathrebu)—

- (a) ym mharagraff (14)(a), hepgorer “or from the date when the invitation to confirm interest is sent”;
- (b) ym mharagraff (15)(b), hepgorer “or the invitation to confirm interest”.

(6) Yn rheoliad 26 (dewis o weithdrefnau)—

- (a) ym mharagraff (8), yn lle “Subject to paragraph (9), the” rhodder “The”;
- (b) hepgorer paragraffau (9) a (10).

(7) Yn rheoliad 27 (gweithdrefn agored), ym mharagraff (4), hepgorer “which was not itself used as a means for calling for competition”.

(8) Yn rheoliad 28 (gweithdrefn gyfyngedig)—

- (a) hepgorer paragraff (2)(b) a’r “, or” o’i flaen;
- (b) ym mharagraff (6), hepgorer “which was not itself used as a means for calling for competition”.

(9) Yn rheoliad 29 (gweithdrefn gystadleuol â negodi)—

- (a) hepgorer paragraff (4)(b) a’r “, or” o’i flaen;
- (b) ym mharagraff (6), hepgorer “which was not itself used as a means of calling for competition”;

Amendment to the Public Contracts Regulations 2015

2.—(1) The Public Contracts Regulations 2015(1) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

- (a) omit the definition of “invitation to confirm interest”;
- (b) in the definition of “procurement document”, omit “the prior information notice where it is used as a means of calling for competition.”.

(3) In regulation 6 (methods for calculating the estimated value of procurement)—

- (a) in paragraph (15A), omit “that is not a devolved Welsh authority”;
- (b) in paragraph (20), omit “that is not a devolved Welsh authority”.

(4) In regulation 18 (principles of procurement), in paragraph (4), omit “that are not devolved Welsh authorities”.

(5) In regulation 22 (rules applicable to communication)—

- (a) in paragraph (14)(a), omit “or from the date when the invitation to confirm interest is sent”;
- (b) in paragraph (15)(b), omit “or the invitation to confirm interest”.

(6) In regulation 26 (choice of procedures)—

- (a) in paragraph (8), for “Subject to paragraph (9), the” substitute “The”;
- (b) omit paragraphs (9) and (10).

(7) In regulation 27 (open procedure), in paragraph (4), omit “which was not itself used as a means for calling for competition”.

(8) In regulation 28 (restricted procedure)--

- (a) omit paragraph (2)(b) and the preceding “, or”;
- (b) in paragraph (6), omit “which was not itself used as a means for calling for competition”.

(9) In regulation 29 (competitive procedure with negotiation)—

- (a) omit paragraph (4)(b) and the preceding “, or”;
- (b) in paragraph (6), omit “which was not itself used as a means of calling for competition”;

(1) O.S. 2015/102, fel y’i diwygiwyd gan O.S. 2020/1319, O.S. 2021/787, O.S. 2022/766 ac O.S. 2023/484. Mae offerynnau diwygio eraill ond nid yw’r un ohonynt yn berthnasol.

(1) S.I. 2015/102, as amended by S.I. 2020/1319, S.I. 2021/787, S.I. 2022/766 and S.I. 2023/484. There are other amending instruments but none which are relevant.

- (c) ym mharagraff (15), hepgorer “or in the invitation to confirm interest”;
- (d) ym mharagraff (19), hepgorer “, in the invitation to confirm interest”;
- (e) ym mharagraff (20), hepgorer “, the invitation to confirm interest”.
- (10) Yn rheoliad 33 (cytundebau fframwaith), ym mharagraff (5), hepgorer “or the invitation to confirm interest”.
- (11) Yn rheoliad 34 (systemau prynu dynamig)—
- (a) hepgorer paragraff (9)(b) a’r “, or” o’i flaen;
- (b) ym mharagraff (23), hepgorer “or in the invitation to confirm interest”.
- (12) Yn rheoliad 35 (arwerthiannau electronig), ym mharagraff (7), hepgorer “or in the invitation to confirm interest”.
- (13) Yn rheoliad 36 (catalogau electronig), ym mharagraff (5)(a), hepgorer “or in the invitation to confirm interest”.
- (14) Yn rheoliad 45 (amrywion), ym mharagraff (2), hepgorer “or in the invitation to confirm interest”.
- (15) Yn rheoliad 46 (rhannu contractau yn lotiau), ym mhob un o baragraffau (3), (4) a (6), hepgorer “or in the invitation to confirm interest”.
- (16) Yn rheoliad 48 (hysbysiadau gwybodaeth ymlaen llaw), hepgorer paragraffau (5), (6) ac (8).
- (17) Yn rheoliad 50 (hysbysiadau dyfarnu contractau), hepgorer paragraff (3).
- (18) Yn rheoliad 53 (argaeledd dogfennau caffael yn electronig)—
- (a) ym mharagraff (1), hepgorer “or the date on which an invitation to confirm interest is sent”;
- (b) ym mhob un o baragraffau (2), (3) a (4), hepgorer “or the invitation to confirm interest”.
- (19) Yn rheoliad 54 (gwahoddiadau i ymgeiswyr)—
- (a) hepgorer paragraff (2);
- (b) ym mharagraff (3), yn lle “paragraphs (1) and (2)” rhodder “paragraph (1)”;
- (c) ym mharagraff (4)(e), hepgorer “in the invitation to confirm interest,”;
- (d) hepgorer paragraff (6).
- (20) Yn rheoliad 56 (egwyddorion cyffredinol dyfarnu contractau etc.), ym mharagraff (1)(a), hepgorer “or the invitation to confirm interest”.
- (21) Yn rheoliad 58 (meini prawf dethol), ym mharagraff (19), hepgorer “or in the invitation to confirm interest”.
- (c) in paragraph (15), omit “or in the invitation to confirm interest”;
- (d) in paragraph (19), omit “, in the invitation to confirm interest”;
- (e) in paragraph (20), omit “, the invitation to confirm interest”.
- (10) In regulation 33 (framework agreements), in paragraph (5), omit “or the invitation to confirm interest”.
- (11) In regulation 34 (dynamic purchasing systems)—
- (a) omit paragraph (9)(b) and the preceding “, or”;
- (b) in paragraph (23), omit “or in the invitation to confirm interest”.
- (12) In regulation 35 (electronic auctions), in paragraph (7), omit “or in the invitation to confirm interest”.
- (13) In regulation 36 (electronic catalogues), in paragraph (5)(a), omit “or in the invitation to confirm interest”.
- (14) In regulation 45 (variants), in paragraph (2), omit “or in the invitation to confirm interest”.
- (15) In regulation 46 (division of contracts into lots), in each of paragraphs (3), (4) and (6), omit “or in the invitation to confirm interest”.
- (16) In regulation 48 (prior information notices), omit paragraphs (5), (6) and (8).
- (17) In regulation 50 (contract award notices), omit paragraph (3).
- (18) In regulation 53 (electronic availability of procurement documents)—
- (a) in paragraph (1), omit “or the date on which an invitation to confirm interest is sent”;
- (b) in each of paragraphs (2), (3) and (4), omit “or the invitation to confirm interest”.
- (19) In regulation 54 (invitations to candidates)—
- (a) omit paragraph (2);
- (b) in paragraph (3), for “paragraphs (1) and (2)” substitute “paragraph (1)”;
- (c) in paragraph (4)(e), omit “in the invitation to confirm interest,”;
- (d) omit paragraph (6).
- (20) In regulation 56 (general principles in awarding contracts etc), in paragraph (1)(a), omit “or the invitation to confirm interest”.
- (21) In regulation 58 (selection criteria), in paragraph (19), omit “or in the invitation to confirm interest”.

(22) Yn rheoliad 65 (lleihau nifer yr ymgeiswyr sydd fel arall yn gymwysedig a wahoddir i gymryd rhan), ym mharagraff (2), hepgorer “or in the invitation to confirm interest”.

(23) Yn rheoliad 75 (cyhoeddi hysbysiadau), hepgorer paragraff (1)(b) a'r “, or” o'i flaen.

(24) Yn rheoliad 76 (egwyddorion dyfarnu contractau), ym mharagraff (3), hepgorer “or prior information notice”.

(25) Yn rheoliad 110 (cyhoeddi cyfleoedd dyfarnu contractau ar ‘Contracts Finder’), hepgorer paragraff (7).

(26) Yn Atodlen 4A (cytundebau masnach ryngwladol), o flaen y cofnod ar gyfer y Cytundeb Masnach Rydd rhwng Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon ac Awstralia, hepgorer “For contracting authorities that are not devolved Welsh authorities:”.

Diwygio Rheoliadau Contractau Consesiwn 2016

3.—(1) Mae Rheoliadau Contractau Consesiwn 2016(1) wedi eu diwygio fel a ganlyn.

(2) Yn rheoliad 8 (egwyddor triniaeth gyfartal, peidio â gwahaniaethu a thryloywder), ym mharagraff (5), hepgorer “that are not devolved Welsh authorities”.

(3) Yn rheoliad 9 (symiau trothwy a dulliau o gyfrifo gwerth amcangyfrifedig contractau consesiwn), ym mharagraff (9A), hepgorer “that is not a devolved Welsh authority”.

(4) Yn Atodlen 4 (cytundebau masnach ryngwladol), o flaen y cofnod ar gyfer y Cytundeb Masnach Rydd rhwng Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon ac Awstralia, hepgorer “For contracting authorities and utilities that are not devolved Welsh authorities:”.

Diwygio Rheoliadau Contractau Cyfleustodau 2016

4.—(1) Mae Rheoliadau Contractau Cyfleustodau 2016(2) wedi eu diwygio fel a ganlyn.

- (2) Yn rheoliad 2 (diffiniadau), ym mharagraff (1)—
- (a) hepgorer y diffiniad o “invitation to confirm interest”;
 - (b) yn y diffiniad o “periodic indicative notice”, hepgorer “, or where relevant, 91(1)(b)”;

(1) O.S. 2016/273 fel y'i diwygiwyd gan O.S. 2019/624, O.S. 2020/1319, O.S. 2021/573, O.S. 2021/787, O.S. 2021/872, O.S. 2021/1221, O.S. 2022/766 ac O.S. 2023/484.

(2) O.S. 2016/274, fel y'i diwygiwyd gan O.S. 2016/696, O.S. 2019/624, O.S. 2020/1319, O.S. 2021/573, O.S. 2021/787, O.S. 2021/872, O.S. 2021/1221, O.S. 2022/766 ac O.S. 2023/484.

(22) In regulation 65 (reduction of the number of otherwise qualified candidates to be invited to participate), in paragraph (2), omit “or in the invitation to confirm interest”.

(23) In regulation 75 (publication of notices), omit paragraph (1)(b) and the preceding “; or”.

(24) In regulation 76 (principles of awarding contracts), in paragraph (3), omit “or prior information notice”.

(25) In regulation 110 (publication of contract award opportunities on Contracts Finder), omit paragraph (7).

(26) In Schedule 4A (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For contracting authorities that are not devolved Welsh authorities:”.

Amendment to the Concession Contracts Regulations 2016

3.—(1) The Concession Contracts Regulations 2016(1) are amended as follows.

(2) In regulation 8 (principle of equal treatment, non-discrimination and transparency), in paragraph (5), omit “that are not devolved Welsh authorities”.

(3) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts), in paragraph (9A), omit “that is not a devolved Welsh authority”.

(4) In Schedule 4 (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For contracting authorities and utilities that are not devolved Welsh authorities:”.

Amendment to the Utilities Contracts Regulations 2016

4.—(1) The Utilities Contracts Regulations 2016(2) are amended as follows.

- (2) In regulation 2 (definitions), in paragraph (1)—
- (a) omit the definition of “invitation to confirm interest”;
 - (b) in the definition of “periodic indicative notice”, omit “, or where relevant, 91(1)(b)”;

(1) S.I. 2016/273 as amended by S.I. 2019/624, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872, S.I. 2021/1221, S.I. 2022/766 and S.I. 2023/484.

(2) S.I. 2016/274, as amended by S.I. 2016/696, S.I. 2019/624, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872, S.I. 2021/1221, S.I. 2022/766 and S.I. 2023/484.

- (c) yn y diffiniad o “procurement document”, hepgorer “, the periodic indicative notice”.
- (3) Yn rheoliad 17 (dulliau o gyfrifo gwerth amcangyfrifedig y caffaeliad)—
- (a) ym mharagraff (15A), hepgorer “that is not a devolved Welsh authority”;
- (b) ym mharagraff 20, hepgorer “that is not a devolved Welsh authority”.
- (4) Yn rheoliad 36 (egwyddorion caffael), ym mharagraff (4), hepgorer “that are not devolved Welsh authorities”.
- (5) Yn rheoliad 40 (rheolau sy’n gymwys i gyfathrebu)—
- (a) ym mharagraff (14)(a), hepgorer “or from the date on which the invitation to confirm interest is sent”;
- (b) ym mharagraff (15)(b), hepgorer “or the invitation to confirm interest”
- (6) Yn rheoliad 44 (dewis o weithdrefnau), hepgorer paragraffau (4)(a) a (5).
- (7) Yn rheoliad 45 (gweithdrefn agored)—
- (a) ym mharagraff (2), yn lle “paragraphs (4) to (6)”, rhodder “paragraphs (4A) to (6)”;
- (b) hepgorer paragraff (4);
- (c) ym mharagraff (4A), hepgorer “that are not devolved Welsh authorities”.
- (8) Yn rheoliad 46 (gweithdrefn gyfyngedig), hepgorer paragraff (2)(b) a’r “; or” o’i flaen.
- (9) Yn rheoliad 47 (gweithdrefn wedi ei negodi â galwad am gystadleuaeth flaenorol), hepgorer paragraff (2)(b) a’r “; or” o’i flaen.
- (10) Yn rheoliad 48 (deialog gystadleuol), hepgorer paragraff (2)(b) a’r “; or” o’i flaen.
- (11) Yn rheoliad 52 (systemau prynu dynamig)—
- (a) hepgorer paragraff (9)(b) a’r “; or” o’i flaen;
- (b) ym mharagraff 23—
- (i) ar ôl is-baragraff (a), mewnosoder “or”;
- (ii) hepgorer is-baragraff (b).
- (12) Yn rheoliad 53 (arwerthiannau electronig), ym mharagraff (7), hepgorer “, in the invitation to confirm interest”.
- (13) Yn rheoliad 54 (catalogau electronig), ym mharagraff (5)(a), hepgorer “, in the invitation to confirm interest”.
- (14) Yn rheoliad 63 (cyfathrebu manylebau technegol), hepgorer paragraff (1)(b) a’r “; or” o’i flaen.
- (c) in the definition of “procurement document”, omit “, the periodic indicative notice”.
- (3) In regulation 17 (methods for calculating the estimated value of the procurement)—
- (a) in paragraph (15A), omit “that is not a devolved Welsh authority”;
- (b) in paragraph 20, omit “that is not a devolved Welsh authority”.
- (4) In regulation 36 (principles of procurement), in paragraph (4), omit “that are not devolved Welsh authorities”.
- (5) In regulation 40 (rules applicable to communication)—
- (a) in paragraph (14)(a), omit “or from the date on which the invitation to confirm interest is sent”;
- (b) in paragraph (15)(b), omit “or the invitation to confirm interest”.
- (6) In regulation 44 (choice of procedures), omit paragraphs (4)(a) and (5).
- (7) In regulation 45 (open procedure)—
- (a) in paragraph (2), for “paragraphs (4) to (6)”, substitute “paragraphs (4A) to (6)”;
- (b) omit paragraph (4);
- (c) in paragraph (4A), omit “that are not devolved Welsh authorities”.
- (8) In regulation 46 (restricted procedure), omit paragraph (2)(b) and the preceding “; or”.
- (9) In regulation 47 (negotiated procedure with prior call for competition), omit paragraph (2)(b) and the preceding “; or”.
- (10) In regulation 48 (competitive dialogue), omit paragraph (2)(b) and the preceding “; or”.
- (11) In regulation 52 (dynamic purchasing systems)—
- (a) omit paragraph (9)(b) and the preceding “; or”;
- (b) in paragraph 23—
- (i) after sub-paragraph (a), insert “or”;
- (ii) omit sub-paragraph (b).
- (12) In regulation 53 (electronic auctions), in paragraph (7), omit “, in the invitation to confirm interest”.
- (13) In regulation 54 (electronic catalogues), in paragraph (5)(a), omit “, in the invitation to confirm interest”.
- (14) In regulation 63 (communication of technical specifications), omit paragraph (1)(b) and the preceding “; or”.

(15) Yn rheoliad 65 (rhannu contractau yn lotiau)—

(a) ym mharagraff (2)—

- (i) ar ôl is-baragraff (a), mewnosoder “or”;
- (ii) hepgorer is-baragraff (b).

(b) ym mharagraff (3)(b) a pharagraff (5)(b), hepgorer “to confirm interest.”

(16) Yn rheoliad 67 (hysbysiadau dangosol cyfnodol), hepgorer paragraffau (5), (6) ac (8).

(17) Yn rheoliad 70 (hysbysiadau dyfarnu contractau), hepgorer paragraff (3).

(18) Yn rheoliad 73 (argaeledd dogfennau caffael yn electronig)—

(a) ym mharagraff (1), hepgorer “or the date on which an invitation to confirm interest is sent”;

(b) ym mharagraff (4), hepgorer “or the invitation to confirm interest”;

(c) ym mharagraff (5)—

- (i) ar ôl is-baragraff (a), mewnosoder “or”;
- (ii) hepgorer is-baragraff (b).

(19) Yn rheoliad 74 (gwahoddiadau i ymgeiswyr)—

(a) hepgorer paragraff (2);

(b) ym mharagraff (3), yn lle “paragraphs (1) and (2)” rhodder “paragraph (1)”;

(c) hepgorer paragraff (6).

(20) Yn rheoliad 91 (cyhoeddi hysbysiadau), ym mharagraff (1)—

(a) ar ôl is-baragraff (a), mewnosoder “or”;

(b) hepgorer is-baragraff (b).

(21) Yn rheoliad 92 (egwyddorion dyfarnu contractau), ym mharagraff (3), hepgorer “, periodic indicative notice”.

(22) Yn rheoliad 105A (y ddyletswydd sy’n ddyledus i weithredwyr economaidd o bartïon GPA), ym mharagraff (3)—

(a) ar ôl is-baragraff (a), mewnosoder “or”;

(b) hepgorer is-baragraff (b).

(23) Yn Atodlen 3 (cytundebau masnach ryngwladol), o flaen y cofnod ar gyfer y Cytundeb Masnach Rydd rhwng Teyrnas Unedig Prydain Fawr a Gogledd Iwerddon ac Awstralia, hepgorer “For utilities that are not devolved Welsh authorities.”

Darpariaethau trosiannol

5.—(1) Nid oes dim yn y Rheoliadau hyn sy’n effeithio ar unrhyw gaffaeliad a gychwynwyd cyn i’r Rheoliadau hyn ddod i rym.

(15) In regulation 65 (division of contract into lots)—

(a) in paragraph (2)—

- (i) after sub-paragraph (a), insert “or”;
- (ii) omit sub-paragraph (b).

(b) in both paragraph (3)(b) and paragraph (5)(b), omit “to confirm interest.”

(16) In regulation 67 (periodic indicative notices), omit paragraphs (5), (6) and (8).

(17) In regulation 70 (contract award notices), omit paragraph (3).

(18) In regulation 73 (electronic availability of procurement documents)—

(a) in paragraph (1), omit “or the date on which an invitation to confirm interest is sent”;

(b) in paragraph (4), omit “or the invitation to confirm interest”;

(c) in paragraph (5)—

- (i) after sub-paragraph (a), insert “or”;
- (ii) omit sub-paragraph (b).

(19) In regulation 74 (invitations to candidates)—

(a) omit paragraph (2);

(b) in paragraph (3), for “paragraphs (1) and (2)” substitute “paragraph (1)”;

(c) omit paragraph (6).

(20) In regulation 91 (publication of notices), in paragraph (1)—

(a) after sub paragraph (a), insert “or”;

(b) omit sub-paragraph (b).

(21) In regulation 92 (principles of awarding contracts), in paragraph (3), omit “, periodic indicative notice”.

(22) In regulation 105A (duty owed to economic operators from GPA parties), in paragraph (3)—

(a) after sub-paragraph (a), insert “or”;

(b) omit sub-paragraph (b).

(23) In Schedule 3 (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For utilities that are not devolved Welsh authorities.”

Transitional provisions

5.—(1) Nothing in these Regulations affects any procurement commenced before these Regulations come into force.

(2) At ddibenion paragraff (1), mae caffaeliad wedi ei gychwyn cyn i'r Rheoliadau hyn ddod i rym os, cyn y dyddiad hwnnw, yn unol â'r Rheoliadau Caffael cymwys, yw—

- (a) hysbysiad wedi ei gyflwyno i wasanaeth e-hysbysu'r DU er mwyn—
 - (i) gwahodd cynigion neu geisiadau i'w dewis i dendro am gontract, cytundeb fframwaith neu system brynu ddynamig arfaethedig, neu i negodi mewn cysylltiad â hwy, neu
 - (ii) cyhoeddi bwriad i gynnal cystadleuaeth ddylunio;
- (b) yr awdurdod contractio neu'r cyfleustod wedi cyhoeddi unrhyw fath o hysbyseb yn ceisio cynigion neu ddatganiadau o ddiddordeb mewn contract, cytundeb fframwaith neu system brynu ddynamig arfaethedig;
- (c) yr awdurdod contractio neu'r cyfleustod wedi cysylltu ag unrhyw weithredwr economaidd er mwyn—
 - (i) ceisio datganiadau o ddiddordeb neu gynigion mewn cysylltiad â chontract, cytundeb fframwaith neu system brynu ddynamig arfaethedig, neu
 - (ii) ymateb i ddatganiad o ddiddordeb neu gynnig digymell a gafwyd gan y gweithredwr economaidd hwnnw mewn perthynas â chontract, cytundeb fframwaith neu system brynu ddynamig arfaethedig.

(3) At ddibenion y Rheoliad hwn, mae caffaeliad yn cwmpasu'r gweithdrefnau cyfan sydd, yn unol â'r Rheoliadau Caffael cymwys, yn deillio o'r cychwyn hwnnw.

(4) Nid yw gweithdrefnau a gymerir at ddiben addasu contract neu gytundeb fframwaith i'w hystyried, at ddibenion paragraff (3), fel petaent yn deillio o gychwyn y caffaeliad y deilliodd dyfarnu'r contract neu'r cytundeb fframwaith hwnnw ei hun ohono.

(5) Nid yw gweithdrefn a gychwynnir fel y'i disgrifir ym mharagraff 2(a)(i), (b) neu (c) i'w hystyried, at ddibenion paragraff (3), fel petai yn deillio o gychwyn unrhyw gystadleuaeth ddylunio a oedd wedi ei chynnal yn flaenorol mewn perthynas â phwnc y caffaeliad.

(6) Yn y Rheoliad hwn—

- (a) ystyr “Rheoliadau Caffael” yw'r canlynol ac, mewn perthynas ag unrhyw weithdrefn, mae'n golygu pa un bynnag o'r canlynol sy'n gymwys i'r weithdrefn honno—
 - (i) Rheoliadau Contractau Cyhoeddus 2015;

(2) For the purposes of paragraph (1), a procurement is commenced before these Regulations come into force if, before that date, in accordance with the applicable Procurement Regulations—

- (a) a notice has been submitted to the UK e-notification service in order to—
 - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system, or
 - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system;
- (c) the contracting authority or utility 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) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(3) For the purposes of this Regulation, a procurement covers the whole of the procedures which, in accordance with the applicable Procurement Regulations, stem from that commencement.

(4) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(5) A procedure commenced as described in paragraph (2)(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

(6) In this Regulation—

- (a) “Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—
 - (i) The Public Contracts Regulations 2015;

- | | |
|---|---|
| <ul style="list-style-type: none"> (ii) Rheoliadau Contractau Consesiwn 2016; (iii) Rheoliadau Contractau Cyfleustodau 2016; <p>(b) mae i'r termau Cymraeg canlynol yr un ystyr â'r termau Saesneg cyfatebol a ddefnyddir yn y Rheoliadau Caffael cymwys—</p> <ul style="list-style-type: none"> (i) awdurdod contractio (“contracting authority”); (ii) cystadleuaeth ddylunio (“design contest”); (iii) system brynu ddynamig (“dynamic purchasing system”); (iv) gweithredwr economaidd (“economic operator”); (v) cytundeb fframwaith (“framework agreement”); (vi) caffaeliad (“procurement”); (vii) gwasanaeth e-hysbysu'r DU (“UK e-notification service”); (viii) cyfleustod (“utility”). | <ul style="list-style-type: none"> (ii) The Concession Contracts Regulations 2016; (iii) The Utilities Contracts Regulations 2016; <p>(b) the following have the same meaning as in the applicable Procurement Regulations—</p> <ul style="list-style-type: none"> (i) contracting authority; (ii) design contest; (iii) dynamic purchasing system; (iv) economic operator; (v) framework agreement; (vi) procurement; (vii) UK e-notification service; (viii) utility. |
|---|---|

Rebecca Evans

Y Gweinidog Cyllid a Llywodraeth Leol, un o
Weinidogion Cymru
3 Mai 2023

Minister for Finance and Local Government, one of
the Welsh Ministers
3 May 2023

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