



Procurement Reform (Scotland) Act 2014

2014 asp 12

PART 3

SPECIFIC DUTIES

Publication of notices on Public Contracts website

22 Public Contracts website

- (1) The Scottish Ministers must establish and maintain a website (the “Public Contracts website”) for the purpose of publicising, in relation to regulated procurements—
 - (a) the seeking of offers, and
 - (b) the award of contracts.
- (2) The Scottish Ministers may use the Public Contracts website for such other purposes as they consider appropriate.

Commencement Information

- II** S. 22 in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

23 Publication of contract notices and award notices

- (1) A contracting authority must publicise its intention to seek offers as part of a regulated procurement on the Public Contracts website.
- (2) A contracting authority must publicise the award of a contract under a regulated procurement on the Public Contracts website.
- (3) The Scottish Ministers may by regulations make further provision about publication under this section.
- (4) The regulations may, in particular, make provision—
 - (a) requiring the duties under subsection (1) and (2) to be complied with within a specified period,

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- (b) providing that, in relation to regulated procurements of a specified description—
 - (i) the duty in subsection (1) or (2) need not be complied with, or
 - (ii) the duty need only be complied with in specified circumstances,
 - (c) specifying the information that must be publicised,
 - (d) providing that a contracting authority may withhold information from publication in specified circumstances.
- (5) In subsection (4), “specified” means specified in the regulations.
- (6) In this Act—
- “contract notice” means the information published in accordance with subsection (1),
 - “award notice” means the information published in accordance with subsection (2).

Commencement Information

I2 S. 23 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

Community benefit requirements

24 Community benefit requirements

For the purposes of this Act, a community benefit requirement is a contractual requirement imposed by a contracting authority—

- (a) relating to—
 - (i) training and recruitment, or
 - (ii) the availability of sub-contracting opportunities, or
- (b) which is otherwise intended to improve the economic, social or environmental wellbeing of the authority's area in a way additional to the main purpose of the contract in which the requirement is included.

Commencement Information

I3 S. 24 in force at 1.6.2016 by S.S.I. 2016/30, art. 4 (with art. 5)

25 Community benefit requirements in major contracts

- (1) This section applies where a contracting authority proposes to carry out a regulated procurement in relation to which the estimated value of the contract is equal to or greater than £4,000,000.
- (2) The contracting authority must, before carrying out the procurement, consider whether to impose community benefit requirements as part of the procurement.
- (3) The contracting authority must, in the contract notice relating to the procurement, include—
 - (a) a summary of the community benefit requirements it intends to include in the contract, or

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- (b) where it does not intend to include any such requirements, a statement of its reasons for not including any requirements.
- (4) Where community benefit requirements are included in a contract, the contracting authority must include in the award notice a statement of the benefits it considers will be derived from those requirements.
- (5) The Scottish Ministers may by order modify subsection (1) so as to substitute for the figure specified there for the time being such other figure as they consider appropriate.

Commencement Information

I4 S. 25 in force at 1.6.2016 by S.S.I. 2016/30, art. 4 (with art. 5)

26 Guidance on community benefit requirements

- (1) The Scottish Ministers may publish guidance on the use of community benefit requirements.
- (2) The guidance may, in particular, cover—
 - (a) consultation that should take place before a contracting authority determines whether or not to include community benefit requirements in a contract to which section 25 applies,
 - (b) the information that should be contained in a contract notice and award notice in relation to community benefit requirements,
 - (c) the circumstances in which inclusion of community benefit requirements would or would not be appropriate.
- (3) Contracting authorities must have regard to any guidance published under this section.
- (4) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.

Commencement Information

I5 S. 26 in force at 11.1.2016 by S.S.I. 2015/411, art. 3

Selection of tenderers and award of contracts

27 Exclusion of economic operators on grounds of criminal activity

- (1) The Scottish Ministers may by regulations require a contracting authority to exclude an economic operator from a regulated procurement (other than an EU-regulated procurement) if any of the following have been convicted of an offence specified in the regulations—
 - (a) the economic operator,
 - (b) a director, secretary, office-holder, or partner of the economic operator, or
 - (c) another person having powers of representation, decision-making or control in relation to the economic operator.
- (2) Regulations under this section may make provision—

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- (a) specifying evidence that is to be conclusive in determining whether or not a person has been convicted of an offence,
- (b) specifying circumstances in which a contracting authority may award a contract to an economic operator despite being otherwise prohibited from doing so under the regulations.

Commencement Information

I6 S. 27 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

28 Selection of tenderers

- (1) The Scottish Ministers may by regulations make further provision about the selection by contracting authorities of economic operators in relation to a regulated procurement (other than an EU-regulated procurement) including, in particular, provision about—
 - (a) the use of minimum standard requirements to assess the suitability of economic operators in relation to a regulated procurement,
 - (b) the circumstances in which an economic operator may or may not be excluded on the basis of criteria specified in the regulations,
 - (c) the procedure that is to be followed in determining whether or not to exclude an economic operator.
- (2) In subsection (1)(a), a minimum standard requirement is a requirement that an economic operator has a particular financial standing, technical ability or other characteristic.
- (3) Without prejudice to the generality of subsection (1)(b), criteria which may be specified in the regulations include—
 - (a) that—
 - (i) the economic operator,
 - (ii) a director, secretary, office-holder or partner of the economic operator,
 - or
 - (iii) another person having powers of representation, decision-making or control in relation to the economic operator,
 has been convicted of an offence,
 - (b) that the economic operator has failed to comply with—
 - (i) an obligation in relation to the payment of tax, or
 - (ii) another statutory duty (other than by committing an offence) specified in the regulations,
 - (c) that the economic operator has committed an act of misconduct of a kind specified in the regulations,
 - (d) that the economic operator has entered into an agreement with another economic operator aimed at distorting competition,
 - (e) that the economic operator does not have a licence, possession of which is necessary to perform the contract,
 - (f) that the economic operator is not a member of a regulatory body, membership of which is necessary to perform the contract,

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- (g) that the economic operator has granted a trust deed for creditors or become otherwise apparently insolvent or is the subject of a petition presented for sequestration,
 - (h) that a receiver or administrator has been appointed in relation to the economic operator,
 - (i) that the economic operator's performance in relation to another regulated procurement was not satisfactory.
- (4) Regulations under this section may make provision specifying evidence that is to be conclusive in determining whether or not such criteria are met.

Commencement Information

I7 [S. 28](#) in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

29 Guidance on selection of tenderers and award of contracts

- (1) The Scottish Ministers may publish guidance about the selection of economic operators and the award of contracts in relation to a regulated procurement.
- (2) The guidance may, in particular, cover—
- (a) the use of questionnaires in the assessment of the suitability of economic operators,
 - (b) the matters relating to—
 - (i) the recruitment, remuneration (including payment of a living wage) and other terms of engagement of persons involved in producing, providing or constructing the subject matter of the regulated procurement, and
 - (ii) employee representation including trade union recognition,that are to be taken into account in assessing the suitability of an economic operator.
- (3) Contracting authorities must have regard to any guidance published under this section.
- (4) The Scottish Ministers must lay a copy of any guidance published under this section before the Scottish Parliament.
- (5) In subsection (2)(b), “living wage” has the same meaning as in section 15(5)(b)(iii).

Commencement Information

I8 [S. 29](#) in force at 28.9.2015 by [S.S.I. 2015/331](#), [art. 3](#)

Technical specifications

30 Technical specifications

- (1) The Scottish Ministers may by regulations make provision about the use of technical specifications in regulated procurements (other than EU-regulated procurements).

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- (2) In this section, a technical specification is a specification which defines required characteristics of—
- (a) goods, services or works,
 - (b) the way in which the goods, services or works are to be produced, provided or constructed,
 - (c) any process relating to another stage in the life cycle of the goods, services or works.
- (3) Regulations under this section may, in particular, make provision or further provision about—
- (a) the matters which are to be taken into account by contracting authorities in determining which technical specifications are to be imposed,
 - (b) the extent to which technical specifications may—
 - (i) be defined by reference to national or international standards or other similar specifications,
 - (ii) include requirements based on the performance or functionality of the goods, services or works,
 - (c) circumstances in which a contracting authority must treat a tender as complying with a technical specification,
 - (d) the wording of technical specifications.

Commencement Information

I9 S. 30 in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

Charges for participation in procurement process

31 Charges for participation in procurement process

A contracting authority must not charge an economic operator a fee for participating in any part of the process relating to a regulated procurement (including a fee to provide any document required to participate in that process).

Commencement Information

I10 S. 31 in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

Giving of reasons

32 Giving of reasons to unsuccessful participants

- (1) This section applies to a regulated procurement (other than an EU-regulated procurement).
- (2) A contracting authority must, as soon as reasonably practicable after deciding to exclude an economic operator from participating in the procurement process at any stage before the economic operator has submitted a tender, notify its decision to the economic operator.

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- (3) A notice under subsection (2) must include the following information—
 - (a) the names of the economic operators who have not been so excluded,
 - (b) the criteria used to exclude the economic operator in question,
 - (c) the contracting authority's scoring (if any), against those criteria, of the economic operator.
- (4) A contracting authority must, as soon as reasonably practicable after deciding to award a contract, notify its decision to all unsuccessful tenderers.
- (5) A notice under subsection (4) must include the following information—
 - (a) the name of the successful tenderer,
 - (b) the criteria used to award the contract,
 - (c) the contracting authority's scoring, against those criteria, of the unsuccessful tenderer and the successful tenderer.

Commencement Information

III S. 32 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

33 Request for further information

- (1) The following persons may request further information in relation to a regulated procurement (other than an EU-regulated procurement)—
 - (a) an economic operator who was excluded from participating in the procurement process before it submitted a tender,
 - (b) an unsuccessful tenderer,
 - (c) the successful tenderer.
- (2) The request must be—
 - (a) in writing, and
 - (b) made before the end of the period of 30 days beginning on—
 - (i) in the case of a person mentioned in subsection (1)(a) or (b), the day the person received a notice under section 32,
 - (ii) in the case of the successful tenderer, the day on which it was notified of the decision to award the contract.
- (3) The contracting authority must, before the end of the period of 30 days beginning on the day it receives the request, provide the relevant information.
- (4) The relevant information is—
 - (a) in the case of an economic operator excluded from the participating in the procurement process, a summary of the reasons why the economic operator was excluded,
 - (b) in the case of an unsuccessful tenderer—
 - (i) a summary of the reasons why the tenderer was unsuccessful, and
 - (ii) the characteristics and relative advantages of the successful tender,
 - (c) in the case of the successful tenderer, a description of any improvements the contracting authority considers the tenderer could have made to its tender.

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Commencement Information

I12 S. 33 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

34 Withholding information

Despite sections 32 and 33, the contracting authority may withhold information from a person if it considers that disclosure would—

- (a) impede law enforcement or otherwise be contrary to the public interest,
- (b) prejudice the commercial interests of any person, or
- (c) prejudice fair competition between economic operators.

Commencement Information

I13 S. 34 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

Contracts register

35 Contracts register

- (1) A contracting authority must keep and maintain a register of contracts (a “contracts register”).
- (2) The contracts that must be registered are any contracts entered into as a result of a regulated procurement.
- (3) In relation to each contract, a contracts register must contain the following information—
 - (a) the date of award,
 - (b) the name of the contractor,
 - (c) the subject matter,
 - (d) the estimated value,
 - (e) the start date,
 - (f) the end date provided for in the contract (disregarding any option to extend the contract) or, where there is no date specified, a description of the circumstances in which the contract will end,
 - (g) the duration of any period for which the contract can be extended.
- (4) The authority may delete an entry in its contracts register only after the contract to which it relates has expired or been terminated.
- (5) The authority must make the information contained in its contracts register publicly available on the internet and by such other means as it considers appropriate.
- (6) However, the authority may withhold an entry or part of an entry in the register if it considers that making it publicly available would—
 - (a) impede law enforcement or otherwise be contrary to the public interest,
 - (b) prejudice the commercial interests of any person, or
 - (c) prejudice fair competition between economic operators.

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Commencement Information

I14 S. 35 in force at 18.4.2016 by S.S.I. 2016/30, art. 3 (with art. 5)

Procurement of recycled and recyclable products etc.

36 Amendment of Climate Change (Scotland) Act 2009

After section 82 of the Climate Change (Scotland) Act 2009 (asp 12) insert—

“82A Procurement of recycled and recyclable products etc.

- (1) The Scottish Ministers may by regulations require specified contracting authorities to ensure that—
 - (a) a specified proportion of the goods or works procured by or on behalf of the authorities, or
 - (b) a specified proportion of the materials used in the production, provision or construction of goods, services or works so procured,
 fall within subsection (2).
- (2) Something falls within this subsection if—
 - (a) it has been used already (including where it has been refurbished since that use),
 - (b) it has been remanufactured, or
 - (c) it is designed to be repaired, reused, refurbished, remanufactured or recycled.
- (3) The regulations may, in particular, make provision about—
 - (a) the circumstances in which the requirement applies,
 - (b) the kinds of things in relation to which the requirement applies,
 - (c) how the specified proportions are to be determined,
 - (d) the circumstances in which a person may apply to the Scottish Ministers to have the requirement disapplied,
 - (e) subject to section 89—
 - (i) the enforcement authority in relation to the regulations, and
 - (ii) the functions of that authority,
 - (f) the keeping of records and their production to the enforcement authority,
 - (g) the enforcement of the duties imposed by the regulations,
 - (h) offences in relation to failures to comply with requirements of the regulations.
- (4) The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.
- (5) Persons to whom the regulations apply must have regard to any guidance given by—
 - (a) the Scottish Ministers,

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(b) the enforcement authority,
to them in relation to the requirements imposed by the regulations.

(6) In this section—

“contracting authority” has the meaning given by section 1 of the Procurement Reform (Scotland) Act 2014,

“specified” means specified in the regulations.”.

Commencement Information

I15 S. 36 in force at 18.4.2016 by [S.S.I. 2016/30](#), [art. 3](#) (with [art. 5](#))

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. para. 13D inserted by [2020 asp 11 Sch. 2 para. 7](#)
- sch. para. 23A inserted by [2020 asp 12 Sch. para. 9\(a\)](#)
- sch. para. 43A inserted by [2020 asp 8 sch. 2 para. 5](#)
- sch. para. 42A inserted by [2021 asp 15 sch. 1 para. 23](#)
- sch. para. 13E inserted by [2021 asp 4 sch. 1 para. 15\(6\)](#)