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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2016 No.**

**The Procurement (Scotland) Regulations 2016**

**PART 2**

**REGULATED CONTRACTS AND DYNAMIC PURCHASING SYSTEMS**

**Methods for calculating the estimated value for regulated contracts**

3.—(1) A contracting authority must calculate the estimated value of a contract by reference to the total amount payable under it (regardless of the form of such payment), not including value added tax.

(2) The total amount payable includes the amount payable as a result of the exercise of any form of option and any renewal of the contract as explicitly set out in the procurement documents.

(3) Where a contracting authority provides for prizes or payments to candidates or tenderers it must take them into account when calculating the estimated value.

(4) Where a contracting authority is comprised of separate operational units the authority—

(a) may calculate the estimated value by reference to each such unit where that unit is independently responsible for its procurement; and

(b) must calculate the estimated value by reference to the total for all the operational units which are not so responsible.

(5) A contracting authority must not choose a method to be used to calculate the estimated value of a contract with the intention of excluding the contract from the application of the Act.

(6) The estimated value must be the value estimated at the moment at which the procurement is commenced.

(7) In the case of a framework agreement or dynamic purchasing system the estimated value shall be the total estimated value of all of the contracts envisaged pursuant to and for the total term of the agreement or system.

(8) In the case of a public works contract the estimated value shall include the total estimated value of any supplies and services that are necessary for executing the works and are to be provided by the contracting authority to the contractor.

(9) In the case of a public contract to be awarded in the form of separate lots, the estimated value shall be the total estimated value of all such lots.

(10) In the case of public contracts which are regular in nature or which are intended to be renewed in a given period, the estimated value shall be calculated by reference to—

(a) the total actual value of contracts of the same type awarded during the period of 12 months or the financial year preceding the proposed award of a further contract but with adjustment of such value, where possible, to take account of the changes in quantity or value which the authority considers will be likely to occur during the period of 12 months following the award of the contract; or

- (b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year where that is longer than 12 months.
- (11) In the case of a public supply contract relating to the leasing, rental, hire or hire purchase of products the estimated value shall be—
- (a) in the case of a fixed term contract for a period of less than or equal to 12 months, the total estimated value of the contract;
  - (b) in the case of a fixed term contract for a period of more than 12 months, the total value including the estimated residual value;
  - (c) in the case of a contract without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.
- (12) In the case of a public service contract for a service of a kind mentioned in this paragraph, the estimated value shall be calculated by reference to—
- (a) for insurance services, the premium payable and any other form of remuneration;
  - (b) for banking and other financial services, the fees, commissions payable, interest and any other form of remuneration;
  - (c) for design contracts, the fees, commissions payable and any other form of remuneration.
- (13) In the case of a public service contract which does not indicate a total price, the estimated value shall be calculated by reference to—
- (a) in the case of a contract for a fixed term of less than or equal to 48 months, the total value of the contract for its full term;
  - (b) in the case of a contract for a fixed term of more than 48 months or a contract without a fixed term, the monthly value multiplied by 48.

#### **Dynamic purchasing systems**

4.—(1) The Act applies to the establishment and operation of dynamic purchasing systems and to contracts awarded under dynamic purchasing systems, except that the following provisions do not apply to contracts awarded under a dynamic purchasing system—

- (a) section 8(2);
- (b) section 11;
- (c) section 23(1);
- (d) section 27.

(2) In the application of section 23(2) of the Act to contracts awarded under dynamic purchasing systems a contracting authority may group notices on a quarterly basis, in which case the authority must send for publication the grouped notices within 30 days of the end of each quarter.