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## SCOTTISH STATUTORY INSTRUMENTS

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**2015 No. 446**

# **PUBLIC PROCUREMENT**

## The Public Contracts (Scotland) Regulations 2015

*Made - - - - 16th December 2015*

*Laid before the Scottish*

*Parliament - - 18th December 2015*

*Coming into force in accordance with Regulation 1*

## THE PUBLIC CONTRACTS (SCOTLAND) REGULATIONS 2015

### PART 1

#### GENERAL

1. Citation, commencement and extent
2. Interpretation

### PART 2

#### RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

#### CHAPTER 1

#### SCOPE AND GENERAL PRINCIPLES

#### SECTION 1

##### *Scope*

3. Subject Matter and application of these Regulations
4. Mixed Procurement
5. Thresholds
- 5A. Review and amendment of certain thresholds
6. Methods for calculating the estimated value
7. Exclusions: Utilities
8. Exclusions: Concessions
9. Exclusions: Electronic Communications
10. Exclusions: Public contracts awarded, and design contests organised, pursuant to international rules
11. Exclusions: Specific service contracts

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12. Exclusions: Service contracts awarded on the basis of an exclusive right
13. Exclusions: Public contracts between entities within the public sector
14. Specific situations: Contracts subsidised by a contracting authority
15. Specific situations: Research and development services
16. Specific situations: Defence and security
17. Mixed procurement involving defence or security aspects
18. Public contracts and design contests involving defence or security aspects which are awarded or organised pursuant to international rules

## SECTION 2

### *General Rules*

19. Principles of procurement
20. Economic Operators
21. Reserved contracts
22. Confidentiality
23. Rules applicable to communication
- 23A Powers to amend regulation
24. Nomenclatures
25. Conflicts of Interest

## CHAPTER 2

### RULES ON PUBLIC CONTRACTS

## SECTION 3

### *Procedures*

26. Conditions relating to the GPA and other international agreements
27. Choice of procedures
28. Open Procedure
29. Restricted Procedure
30. Competitive procedure with negotiation
31. Competitive Dialogue
32. Innovation Partnership
33. Use of the negotiated procedure without prior publication

## SECTION 4

### *Techniques and Instruments for Electronic and Aggregated Procurement*

34. Framework Agreements
35. Dynamic Purchasing Systems
36. Electronic Auctions
37. Electronic catalogues
38. Centralised purchasing activities and central purchasing bodies
39. Occasional joint procurement
40. Procurement involving contracting authorities from different member States

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## SECTION 5

### *Conduct of the Procedure*

41. Preliminary market consultation
42. Prior involvement of candidates or tenderers
43. Technical specifications
44. Labels
45. Test reports, certificates and other means of proof
46. Variants
47. Division of contracts into lots
48. Setting time limits
49. Prior information notices
50. Contract notices
51. Contract award notices
52. Publication on the UK e-notification service
53. Publication otherwise than on the UK e-notification service
54. Electronic availability of procurement documents
55. Invitations to candidates
56. Informing candidates and tenderers

### *Choice of Participants and Awarding Contracts*

57. General principles
58. Exclusion grounds
59. Selection criteria
60. ... Single Procurement Document: Use, content and form of the SPD
61. Means of proof
62. Recourse to e-Certis
63. Quality assurance standards and environmental management standards
64. Reliance upon the capacities of other entities
65. Recognition of official lists of approved economic operators and certification by certification bodies.
66. Reduction of the number of otherwise qualified candidates to be invited to participate
67. Contract award criteria
68. Life-cycle costing
69. Abnormally low tenders

## SECTION 6

### *Contract Performance*

70. Conditions for performance of contracts
- 70A. Electronic invoicing
71. Subcontracting
72. Modification of contracts during their term
73. Termination of contracts

## CHAPTER 3

### PARTICULAR PROCUREMENT REGIMES

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## SECTION 7

### *Social and Other Specific Services*

- 74. Award of contracts for social and other specific services
- 75. Publication of notices
- 76. Principles of awarding contracts

## SECTION 8

### *Rules Governing Design Contests*

- 77. Scope of Section 8
- 78. Notices
- 79. Rules on the organisation of design contests and the selection of participants
- 80. Appointment and composition of the jury
- 81. Decisions of the jury

## CHAPTER 4

### RECORDS AND REPORTS

- 82. Retention of contract copies
- 83. Reporting and documentation requirements

## CHAPTER 4A

### REGULATIONS UNDER THIS PART

- 83A General provisions about regulations under this Part

## PART 3

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### FACILITATION OF REMEDIES

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- 85. Notices of decisions to award a contract or conclude a framework agreement
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## CHAPTER 6

### APPLICATIONS TO THE COURT

- 87. Duty owed to economic operators
- 88. Enforcement of duties through the courts
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- 90. Powers and duties of the court
- 91. Ineffectiveness orders
- 92. Powers of the court

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- 93. General interest grounds for not making a declaration of ineffectiveness
- 94. Other orders
- 95. Financial penalties

#### PART 4

#### REVOCATIONS, CONSEQUENTIAL AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS

- 96. Interpretation of Part 6
- 97. Revocations and consequential amendments
- 98. Transitional provision and saving where procurement procedure commenced before 18th April 2016
- 99. Transitional Provision and saving where utilities procurement procedures commenced before 18th April 2016
- 100. Transitory provision prior to full commencement of regulation 23(1) to (7)
- 101. Transitory Provision: temporary exemption  
Signature

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#### SCHEDULE 1 CENTRAL GOVERNMENT AUTHORITIES

This Schedule transposes Annex I to the Directive by listing...

Where an entity listed in this Schedule is succeeded by...

#### SCHEDULE 2 ACTIVITIES CONSTITUTING WORKS

In this Schedule, 'NACE Rev.1' has the same meaning as...

#### SCHEDULE 3 SOCIAL AND OTHER SPECIFIC SERVICES

#### SCHEDULE 4 LIST OF PRODUCTS RELEVANT TO THRESHOLDS

The products covered by this Schedule are those specified in...

#### SCHEDULE 5 PROFESSIONAL AND TRADE REGISTERS ETC.

.....

#### SCHEDULE 6 CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

##### PART 1 MODIFICATIONS TO PRIMARY LEGISLATION

- 1. Late Payment of Commercial Debts (Interest) Act 1998
- 2. Procurement Reform (Scotland) Act 2014
- 3. Small Business, Enterprise and Employment Act 2015

##### PART 2 MODIFICATIONS TO SUBORDINATE LEGISLATION

- 4. Bathing Waters (Scotland) Regulations 2008
- 5. Cleaner Road Transport Vehicles (Scotland) Regulations 2010
- 6. Defence and Security Public Contracts Regulations 2011
- 7. Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012
- 8. Utilities Contracts (Scotland) Regulations 2012
- 9. Energy Efficiency (Eligible Buildings) Regulations 2013
- 10. Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions)  
(Scotland) Order 2013
- 11. Energy Savings Opportunity Scheme Regulations 2014  
Explanatory Note

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