
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 2

RULES ON PUBLIC CONTRACTS

SECTION 5

Conduct of the Procedure

Preliminary market consultation

41.—(1) Before commencing a procurement, a contracting authority may conduct market consultation with a view to preparing the procurement and informing economic operators of the authority's procurement plans and requirements.

(2) For this purpose, a contracting authority may act as it considers appropriate, including seeking or accepting advice from independent experts or authorities or from market participants.

(3) Such advice may be used in the planning and conduct of the procurement procedure, provided that it does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.

Prior involvement of candidates or tenderers

42.—(1) A contracting authority must take appropriate measures to ensure that competition is not distorted by the participation of a candidate or tenderer where that candidate or tenderer, or an undertaking related to that candidate or tenderer—

- (a) has advised the contracting authority, whether in the context of regulation 41 (preliminary market consultation) or not; or
- (b) has otherwise been involved in the preparation of the procurement.

(2) Such measures must include—

- (a) the communication to the other candidates and tenderers of relevant information exchanged in the context of or resulting from the involvement of the candidate or tenderer in the preparation of the procurement procedure; and
- (b) the fixing of adequate time limits for the receipt of tenders.

(3) A candidate or tenderer in a situation referred to in paragraph (1) may only be excluded from the procedure for the purpose of paragraph (1) where there are no other means to ensure compliance with the duty referred to in regulation 19(1) (principles of procurement).

(4) Prior to any such exclusion, a candidate or tenderer must be given the opportunity to prove that their involvement in preparing the procurement procedure is not capable of distorting competition.

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(5) The measures taken must be documented in the report referred to in regulation 83(1) (reporting and documentation requirements).

Technical specifications

43.—(1) The technical specifications must—

- (a) be set out in the procurement documents; and
- (b) lay down the characteristics required of any works, supply or service.

(2) In the case of a public works contract, technical specifications define any characteristics required of a material, product or supply so that it fulfils the use for which it is intended by the contracting authority.

(3) The characteristics referred to in paragraph (2) may include—

- (a) levels of environmental and climate performance;
- (b) design for all requirements (including accessibility for disabled persons) and conformity assessment;
- (c) performance, safety or dimensions, including the procedures concerning quality assurance;
- (d) terminology;
- (e) symbols;
- (f) testing and test methods;
- (g) packaging, marking and labelling;
- (h) user instructions;
- (i) production processes and methods at any stage of the life cycle of the works;
- (j) rules relating to design and costing, and the test, inspection and acceptance conditions for works; and
- (k) methods or techniques of construction and all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished works and to the materials or parts which they involve.

(4) In the case of a public supply or public service contract, the required characteristics may include—

- (a) quality levels;
- (b) environmental and climate performance levels;
- (c) design for all requirements (including accessibility for disabled persons) and conformity assessment;
- (d) performance, use of the product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold;
- (e) terminology;
- (f) symbols;
- (g) testing and test methods;
- (h) packaging, marking and labelling;
- (i) user instructions;
- (j) production processes and methods at any stage of the life cycle of the supply or service; and
- (k) conformity assessment procedures.

(5) In the case of any public contract, the required characteristics may also refer to—

- (a) the specific process or method of production or provision of the requested works, supplies or services; or
 - (b) a specific process for another stage of its life cycle,
- even where such factors do not form part of their material substance provided that they are linked to the subject-matter of the contract and proportionate to its value and its objectives.
- (6) The technical specifications may also specify whether the transfer of intellectual property rights will be required.
- (7) Where the subject of the procurement is intended for use by natural persons, whether the general public or staff of the contracting authority, the technical specifications must, except in duly justified cases, be drawn up so as to take into account accessibility criteria for persons with disabilities or design for all users.
- (8) Where mandatory accessibility requirements are [^{F1}imposed by [^{F2}assimilated] law], technical specifications must, as far as accessibility criteria for persons with disabilities or design for all users are concerned, be defined by reference thereto.
- (9) Technical specifications must afford equal access of economic operators to the procurement procedure and must not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.
- (10) Without prejudice to mandatory national technical rules, to the extent that they are compatible with [^{F3}assimilated] law, the technical specifications must be formulated—
- (a) in terms of performance or functional requirements, including environmental characteristics, provided that the parameters are sufficiently precise to allow tenderers to determine the subject-matter of the contract and to allow the contracting authority to award the contract;
 - (b) by reference to any of the following technical specifications in the following order of precedence—
 - (i) national standards transposing European standards;
 - (ii) European Technical Assessments;
 - (iii) common technical specifications;
 - (iv) international standards;
 - (v) other technical reference systems established by the European standardisation bodies; or
 - (vi) when none of the above exist, national standards, national technical approvals or national technical specifications relating to the design, calculation and execution of the works and use of the supplies,but each reference must be accompanied by the words ‘or equivalent’;
 - (c) in terms of performance or functional requirements as referred to in sub-paragraph (a), with reference to the technical specifications referred to in sub-paragraph (b) as a means of presuming conformity with such performance or functional requirements; or
 - (d) by reference to the technical specifications referred to in sub-paragraph (b) for certain characteristics, and by reference to the performance or functional requirements referred to in sub-paragraph (a) for other characteristics.
- (11) Subject to paragraph (12), technical specifications must not, with the effect of favouring or eliminating certain undertakings or certain products, refer to—
- (a) a specific make or source;
 - (b) a particular process which characterises the products or services provided by a specific economic operator; or

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- (c) trade marks, patents, types, or a specific origin or production.
- (12) Reference of a kind referred to in paragraph (11) is permitted in any of the following circumstances—
- (a) where justified by the subject-matter of the contract;
 - (b) on an exceptional basis, where a sufficiently precise and intelligible description of the subject-matter of the contract pursuant to paragraph (10) is not possible, in which case the reference must be accompanied by the words “or equivalent”.
- (13) Where a contracting authority formulates technical specifications in terms of performance or functional requirements in accordance with paragraph (10)(a), it must not reject a tender for works, supplies or services which complies with a technical specification of a kind mentioned in paragraph (10)(b)(i) to (v), where those specifications address the performance or functional requirements which it has laid down.
- (14) Where a contracting authority formulates technical specifications in accordance with paragraph (10)(b), it must not reject a tender on the grounds that the works, supplies or services tendered for do not comply with the technical specifications to which it has referred, where the tenderer proves in its tender by any appropriate means, including the means of proof referred to in regulation 45 (test reports, certificates and other means of proof), that the solution proposed satisfies in an equivalent manner the requirements defined by the technical specifications.
- (15) In its tender, the tenderer must prove by any appropriate means, including those referred to in regulation 45 (test reports, certificates and other means of proof), that the works, supply or service in compliance with the standard meets the performance or functional requirements of the contracting authority.

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| F1 | Words in reg. 43(8) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468) , regs. 1(2), 4(31)(a) (with sch. paras. 1-5) |
| F2 | Word in reg. 43(8) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374) , reg. 1(1), sch. 2 para. 29(2)(a) |
| F3 | Word in reg. 43(10) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374) , reg. 1(1), sch. 2 para. 29(2)(b) |

Labels

44.—(1) Where a contracting authority intends to purchase works, supplies or services with specific environmental, social or other characteristics the authority may, in the technical specifications, the award criteria or the contract performance conditions, require a specific label as means of proof that the works, services or supplies correspond to the required characteristics, provided that all of the following conditions are fulfilled—

- (a) the label requirements only concern criteria which are linked to the subject-matter of the contract and are appropriate to define characteristics of the works, supplies or services;
- (b) the label requirements are based on objectively verifiable and non-discriminatory criteria;
- (c) the label is established in an open and transparent procedure in which all relevant stakeholders, including government bodies, consumers, social partners, manufacturers, distributors and non-governmental organisations, may participate;
- (d) the label is accessible to all interested parties; and
- (e) the label requirements are set by a third party over which the economic operator applying for the label cannot exercise a decisive influence.

(2) Where a contracting authority does not require the works, supplies or services to meet all of the label requirements, the authority must indicate which label requirements are required.

(3) A contracting authority requiring a specific label must accept all labels that confirm that the works, supplies or services meet equivalent label requirements.

(4) Where an economic operator had demonstrably no possibility of obtaining the specific label indicated by the contracting authority, or an equivalent label, within the relevant time limits for reasons that are not attributable to that economic operator, the contracting authority must accept other appropriate means of proof, which may include a technical dossier from the manufacturer, provided that the economic operator concerned proves that the works, supplies or services to be provided by it fulfil the requirements of the specific label or the specific requirements indicated by the contracting authority.

(5) Where a label fulfils the conditions mentioned in paragraph (1)(b), (c), (d) and (e) but also sets out requirements not linked to the subject-matter of the contract, a contracting authority must not require the label but may define the technical specification by reference to those of the detailed specifications of that label, or, where necessary, parts of it, that are linked to the subject-matter of the contract and are appropriate to define characteristics of that subject-matter.

Test reports, certificates and other means of proof

45.—(1) A contracting authority may require an economic operator to provide a test report from a conformity assessment body or a certificate issued by such a body as means of proof of conformity with requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

(2) Where a contracting authority requires the submission of certificates drawn up by a specific conformity assessment body, certificates from other equivalent conformity assessment bodies must also be accepted by the contracting authority.

(3) In paragraphs (1) and (2), “conformity assessment body” means a body that performs conformity assessment activities including calibration, testing, certification and inspection accredited in accordance with Regulation (EC) No 765/2008 of the European Parliament and of the Council setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing Regulation (EEC) No 339/93^{M1}.

(4) Where the economic operator concerned has no access to the certificates or test reports referred to in paragraphs (1) and (2), or no possibility of obtaining them within the relevant time limits, a contracting authority must accept appropriate means of proof other than those referred to in paragraphs (1) and (2), such as a technical dossier of the manufacturer, provided that—

- (a) the lack of access is not attributable to the economic operator concerned; and
- (b) the means of proof provided by the economic operator concerned proves that the works, supplies or services provided by it meet the requirements or criteria set out in the technical specifications, the award criteria or the contract performance conditions.

Marginal Citations

M1 OJ No L 218, 13.8.2008, p.30.

Variants

46.—(1) A contracting authority may authorise or require tenderers to submit variants.

(2) A contracting authority must indicate in the contract notice ^{F4}... whether or not it authorises or requires variants.

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(3) A contracting authority authorising or requiring variants must state in the procurement documents the minimum requirements to be met by the variants and any specific requirements for their presentation, in particular whether variants may be submitted only where the economic operator also submits a tender which is not a variant.

(4) A contracting authority must not take into consideration a variant which—

- (a) has not been authorised or required;
- (b) is not linked to the subject matter of the contract; or
- (c) does not meet the minimum requirements laid down by the contracting authority.

(5) A contracting authority must ensure that the award criteria can be applied to variants meeting those minimum requirements as well as to tenders which are not variants.

(6) In a procedure for awarding a public supply contract or public service contract, a contracting authority that has authorised or required variants must not reject a variant on the sole ground that it would, where successful, lead to either a public service contract rather than a public supply contract or a public supply contract rather than a public service contract.

F4 Words in [reg. 46\(2\)](#) omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), [regs. 2, 4\(11\)](#) (with [reg. 3](#))

Division of contracts into lots

47.—(1) A contracting authority may decide to award a contract in the form of separate lots and may determine the size and subject-matter of such lots.

(2) Where a contracting authority decides not to award a contract in the form of separate lots the authority must indicate the main reasons for its decision in the procurement documents or in the report referred to in regulation 83(1) (reporting and documentation requirements).

(3) Where a contracting authority decides to award a contract in the form of separate lots it must indicate, in the contract notice or in the invitation to confirm interest, whether tenders may be submitted for one, for several or for all of the lots.

(4) A contracting authority may, even where tenders may be submitted for several or all lots, limit the number of lots that may be awarded to one tenderer, provided that the maximum number of lots per tenderer is stated in the contract notice or in the invitation to confirm interest.

(5) A contracting authority must indicate in the procurement documents the objective and non-discriminatory criteria or rules it intends to apply for determining which lots will be awarded where the application of the award criteria would result in one tenderer being awarded more lots than the maximum number.

(6) Where more than one lot may be awarded to the same tenderer, a contracting authority may award contracts combining several or all lots where the authority—

- (a) has specified in the contract notice or in the invitation to confirm interest that it reserves the possibility of doing so; and
- (b) indicated the lots or groups of lots that may be combined.

Setting time limits

48.—(1) When fixing the time limits for the receipt of tenders and requests to participate, a contracting authority must take account of the complexity of the contract and the time required for drawing up tenders, without prejudice to the minimum time limits set out in regulations 28 to 32.

(2) Where tenders can be made only after a visit to the site or after on-the-spot inspection of the documents supporting the procurement documents, the time limits for the receipt of tenders, which

shall be longer than the minimum time limits set out in regulations 28 to 32, must be fixed so that all economic operators concerned may be aware of all the information needed to produce tenders.

(3) A contracting authority must extend the time limits for the receipt of tenders, so that all economic operators concerned may be aware of all the information needed to produce tenders, where—

- (a) for whatever reason, additional information, although requested by the economic operator in good time, is not supplied at the latest 6 days before the time limit fixed for the receipt of tenders; or
- (b) significant changes are made to the procurement documents.

(4) In the case of an accelerated procedure, the period mentioned in paragraph (3)(a) shall be 4 days.

(5) The length of the extension given pursuant to paragraph (3) must be proportionate to the importance of the information or change.

(6) A contracting authority is not required to extend the time limit where—

- (a) additional information has not been requested in good time; or
- (b) the additional information requested is of insignificant importance with a view to preparing responsive tenders.

Prior information notices

49.—(1) A contracting authority may make known its intentions of planned procurements through the publication of a prior information notice.

(2) A prior information notice must contain the information set out in section I of Part B of Annex V to the Directive ^{F5}, but as if—

- (a) in paragraph 2, “the second and third sub-paragraph of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations, and
- (b) in paragraph 9, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations].

(3) A contracting authority wishing to publish a prior information notice must—

- (a) ^{F6}submit it for publication in accordance with regulation 52 (^{F7}publication on the UK e-notification service]); or
- (b) publish it on the contracting authority's buyer profile in accordance with regulation 53 (publication ^{F8}otherwise than on the UK e-notification service]).

(4) Where the prior information notice is published by the contracting authority on its buyer profile, the contracting authority must ^{F9}submit for publication, in accordance with regulation 52 (^{F10}publication on the UK e-notification service]), a notice of the publication on its buyer profile.

(5) The notice of publication referred to in paragraph (4) must contain the information set out in Part A of Annex V to the Directive ^{F11}, but as if, in paragraph 6, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations].

^{F12}(6)

^{F13}(7)

(8) ^{F14}The] period covered by a prior information notice must be a maximum of 12 months from the date on which the notice is sent for publication.

^{F15}(9)

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- F5** Reg. 49(2)(a)(b) and words inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(a)** (with sch. paras. 1-5)
- F6** Word in reg. 49(3)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(b)(i)** (with sch. paras. 1-5)
- F7** Words in reg. 49(3)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(b)(ii)** (with sch. paras. 1-5)
- F8** Words in reg. 49(3)(b) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(c)** (with sch. paras. 1-5)
- F9** Word in reg. 49(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(d)(i)** (with sch. paras. 1-5)
- F10** Words in reg. 49(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(d)(ii)** (with sch. paras. 1-5)
- F11** Words in reg. 49(5) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(32)(e)** (with sch. paras. 1-5)
- F12** Reg. 49(6) omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(12)(a)** (with reg. 3)
- F13** Reg. 49(7) omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(12)(a)** (with reg. 3)
- F14** Word in reg. 49(8) substituted (30.5.2023) by The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(12)(b)** (with reg. 3)
- F15** Reg. 49(9) omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(12)(c)** (with reg. 3)

[^{F16}Contract notices

50. Contract notices must—

- (a) contain the information set out in part C of Annex V to the Directive, but as if—
 - (i) in paragraph 2, “the second and third sub-paragraphs of Article 53(1)” were a reference to regulation 54(3) and (4) of these Regulations,
 - (ii) paragraph 24 (financing by EU funds) were omitted,
 - (iii) in paragraph 26, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015)”, and
 - (iv) in paragraph 28, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations, and
- (b) be submitted for publication in accordance with regulation 52 (publication on the UK e-notification service).]

- F16** Reg. 50 substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(33)** (with sch. paras. 1-5)

Contract award notices

51.—(1) Not later than 30 days after the award of a contract or conclusion of a framework agreement, a contracting authority must [^{F17}submit] for publication in accordance with regulation 52 ([^{F18}publication on the UK e-notification service]) a contract award notice on the results of the procurement procedure.

[^{F19}(2) Such notices must—

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- (a) contain the information set out in part D of Annex V to the Directive, but as if—
 - (i) in paragraph 9, “Article 67” were a reference to regulation 67 (contract award criteria) of these Regulations,
 - (ii) in paragraph 11(b), the words “Member State or from a third” were omitted,
 - (iii) paragraph 15 (financing by EU funds) were omitted,
 - (iv) in paragraph 17, “in the *Official Journal of the European Union*” read “on the UK e-notification service (within the meaning of the Public Contracts (Scotland) Regulations 2015)”, and
 - (v) in paragraph 18, “date of dispatch” were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations, and
 - (b) be submitted for publication in accordance with regulation 52 (publication on the UK e-notification service),]
- ^{F20}(3)
- (4) Paragraph (1) does not apply where the contract awarded is a contract based on a framework agreement.
- (5) In the case of the award of a contract based upon a dynamic purchasing system, a contracting authority must either—
- (a) [^{F21}submit] for publication in accordance with regulation 52 ([^{F22}publication on the UK e-notification service]) a contract award notice within 30 days after the award of each such contract; or
 - (b) group notices referred to in sub-paragraph (a) on a quarterly basis, in which case the authority must [^{F23}submit] for publication the grouped notices within 30 days of the end of each quarter.
- (6) A contracting authority may withhold from publication information on the contract award or the conclusion of the framework agreement where the release of the information—
- (a) would impede law enforcement or otherwise be contrary to the public interest;
 - (b) would prejudice the commercial interests of any person; or
 - (c) might prejudice fair competition between economic operators.

- F17** Word in reg. 51(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(a)(i)** (with sch. paras. 1-5)
- F18** Words in reg. 51(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(a)(ii)** (with sch. paras. 1-5)
- F19** Reg. 51(2) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(b)** (with sch. paras. 1-5)
- F20** Reg. 51(3) omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(13)** (with reg. 3)
- F21** Word in reg. 51(5)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(c)** (with sch. paras. 1-5)
- F22** Words in reg. 51(5)(a) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(d)** (with sch. paras. 1-5)
- F23** Word in reg. 51(5)(b) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(34)(c)** (with sch. paras. 1-5)

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[^{F24}Publication on the UK e-notification service]

52.—(1) The notices required by regulations 49, 50, 51, 72, 75 and 78 to be [^{F25}submitted] for publication in accordance with this regulation must—

(a) be [^{F25}submitted] by electronic means to the [^{F26}UK e-notification service] for publication.^{F27} ...

^{F27}(b)

(2) Contracting authorities must ensure that they are able to supply proof of the dates on which notices are [^{F28}submitted to the UK e-notification service] for publication.

(3) Where the [^{F29}UK e-notification service] has given the contracting authority confirmation of ^{F30}... the publication of the information [^{F31}submitted], indicating the date of that publication, that confirmation shall constitute proof of publication.

(4) A contracting authority may [^{F32}submit] notices in respect of public contracts to the [^{F33}UK e-notification service] for publication even where the authority is not required to do so by these Regulations^{F34}....

^{F35}(5) In these Regulations, “the UK e-notification service” means a single web-based portal which is provided, for purposes which include the purposes of this Part, by or on behalf of the Cabinet Office.

(6) For the purposes of these Regulations, a notice of any description is submitted to the UK e-notification service if the information comprising the notice is entered in the portal in such form or manner as the portal may elicit it and in compliance with any specific instructions that are given within the portal about how the information, or any particular element of it, is to be entered.]

- F24** Reg. 52 heading substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(a) (with sch. paras. 1-5)
- F25** Word in reg. 52(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(b)(i) (with sch. paras. 1-5)
- F26** Words in reg. 52(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(b)(ii) (with sch. paras. 1-5)
- F27** Reg. 52(1)(b) and word omitted (31.12.2020) by virtue of The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(b)(iii) (with sch. paras. 1-5)
- F28** Words in reg. 52(2) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(c) (with sch. paras. 1-5)
- F29** Words in reg. 52(3) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(d)(i) (with sch. paras. 1-5)
- F30** Words in reg. 52(3) omitted (31.12.2020) by virtue of The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(d)(ii) (with sch. paras. 1-5)
- F31** Word in reg. 52(3) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(d)(iii) (with sch. paras. 1-5)
- F32** Word in reg. 52(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(e)(i) (with sch. paras. 1-5)
- F33** Words in reg. 52(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(e)(ii) (with sch. paras. 1-5)
- F34** Words in reg. 52(4) omitted (31.12.2020) by virtue of The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), 4(35)(e)(iii) (with sch. paras. 1-5)

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F35 Reg. 52(5)(6) inserted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(35)(f)** (with sch. paras. 1-5)

Publication [^{F36}otherwise than on the UK e-notification service]

53.—(1) In addition to the publication of the notices referred to in regulations 49, 50, 51, 75 and 78 [^{F37}on the UK e-notification service], a contracting authority may publish the information contained in such notices on the internet on a buyer profile.

(2) A buyer profile may also include—

- (a) prior information notices which are published on it pursuant to regulation 49(3)(b) (prior information notices);
- (b) information on ongoing invitations to tender, scheduled purchases, contracts concluded, procedures cancelled; and
- (c) any useful general information, such as a contact point, a telephone and a fax number, a postal address and an e-mail address.

(3) The notices referred to in regulations 49, 50, 51 and 78, and the information contained in them, must not be published [^{F38}otherwise than on the UK e-notification service before they are published on that service].

(4) Notwithstanding paragraph (3), publication may take place [^{F39}otherwise than on the UK e-notification service] where a contracting authority has not been notified of the publication [^{F40}on that service within 48 hours after the notice was submitted to that service].

(5) A notice published [^{F41}otherwise than on the UK e-notification service] must not contain information other than that contained in the notice [^{F42}submitted to that service] or published on a buyer profile, but must indicate the date of [^{F43}submission of the notice to that service] or its publication on the buyer profile.

(6) Where a prior information notice is to be published on a buyer profile for the purposes of regulation 49(3) (prior information notices) —

- (a) the prior information notice may not be so published before the contracting authority [^{F44}submits to the UK e-notification service] the notice referred to in regulation 49(4) (prior information notices); and
- (b) the prior information notice must indicate the date of that [^{F45}submission].

F36 Words in reg. 53 heading substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(a)** (with sch. paras. 1-5)

F37 Words in reg. 53(1) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(b)** (with sch. paras. 1-5)

F38 Words in reg. 53(3) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(c)** (with sch. paras. 1-5)

F39 Words in reg. 53(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(d)(i)** (with sch. paras. 1-5)

F40 Words in reg. 53(4) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(d)(ii)** (with sch. paras. 1-5)

F41 Words in reg. 53(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(e)(i)** (with sch. paras. 1-5)

F42 Words in reg. 53(5) substituted (31.12.2020) by The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/468), regs. 1(2), **4(36)(e)(ii)** (with sch. paras. 1-5)

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- F43** Words in [reg. 53\(5\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(36\)\(e\)\(iii\)](#) (with sch. paras. 1-5)
- F44** Words in [reg. 53\(6\)\(a\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(36\)\(f\)\(i\)](#) (with sch. paras. 1-5)
- F45** Word in [reg. 53\(6\)\(b\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(36\)\(f\)\(ii\)](#) (with sch. paras. 1-5)

Electronic availability of procurement documents

54.—(1) A contracting authority must offer on the internet unrestricted and full direct access free of charge to the procurement documents from the date of publication of a notice in accordance with regulation 52 ([^{F46}publication on the UK e-notification service]) or the date on which an invitation to confirm interest was sent.

(2) The text of the notice or the invitation to confirm interest must specify the internet address at which the procurement documents are accessible.

(3) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered for one of the reasons set out in regulation 23(3) (rules applicable to communication), a contracting authority may indicate in the notice or the invitation to confirm interest that the procurement documents concerned will be transmitted by means other than electronic means in accordance with the periods mentioned in paragraphs (6) and (7).

(4) Where unrestricted and full direct access free of charge by electronic means to certain procurement documents cannot be offered because a contracting authority intends to apply regulation 22(3) (confidentiality), the authority must indicate in the notice or the invitation to confirm interest which measures, aimed at protecting the confidential nature of the information, the authority requires and how access can be obtained to the documents concerned.

(5) Where paragraph (3) or (4) applies, the time limit for the submission of tenders must be extended by 5 days, except in a case of duly substantiated urgency referred to in regulation 28(5) (open procedure), regulation 29(11) (restricted procedure), or regulation 30(11) (competitive procedure with negotiation).

(6) Provided that it has been requested in good time, a contracting authority must, not later than 6 days before the time limit fixed for the receipt of tenders, supply to all tenderers taking part in the procurement procedure additional information relating to the specifications and any supporting documents.

(7) In the case of an accelerated procedure, the period mentioned in paragraph (6) shall be not later than 4 days before the time limit fixed for the receipt of tenders.

- F46** Words in [reg. 54\(1\)](#) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), [4\(37\)](#) (with sch. paras. 1-5)

Invitations to candidates

55.—(1) In a restricted procedure, a competitive dialogue procedure, an innovation partnership and a competitive procedure with negotiation, an invitation by a contracting authority to selected candidates or to participants to submit a tender must be issued simultaneously and in writing.

(2) In a competitive dialogue procedure or an innovation partnership, an invitation by a contracting authority to selected candidates to participate must be issued simultaneously and in writing.

^{F47}(3)

- (4) The invitations required by paragraphs (1) [^{F48}and (2)] must—
- (a) include a reference to the electronic address at which the procurement documents have been made directly available by electronic means; or
 - (b) be accompanied by the procurement documents, where those documents have not been the subject of unrestricted and full direct access, free of charge, for the reasons referred to in regulation 54(3) or (4) (electronic availability of procurement documents) and have not already been made otherwise available.
- (5) The invitations required by paragraphs (1) and (2) must also contain at least the following information—
- (a) a reference to the call for competition published;
 - (b) where tenders are to be submitted, the deadline for the receipt of the tenders, the address to which the tenders must be sent and the language in which the tenders must be drawn up;
 - (c) in the case of competitive dialogue, the date and the address set for the start of consultation and the language or languages to be used;
 - (d) a reference to any documents to be submitted, either in support of verifiable declarations by the tenderer in accordance with regulations 60 (^{F49}... Single Procurement Document: use, content and form of [^{F50}SPD]) and 61 (means of proof) and, where appropriate, 63 (quality assurance standards and environmental management standards) or to supplement the information referred to in those regulations, and under the conditions laid down in regulations 60, 61 and 63; and
 - (e) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance of such criteria, where they are not given in the contract notice, in the invitation to confirm interest, in the technical specifications or the descriptive document.

^{F51}(6)

- F47** Reg. 55(3) omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **4(14)(a)** (with reg. 3)
- F48** Words in reg. 55(4) substituted (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **4(14)(b)** (with reg. 3)
- F49** Word in reg. 55(5)(d) omitted (31.12.2020) by virtue of [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(38)(a)** (with sch. paras. 1-5)
- F50** Word in reg. 55(5)(d) substituted (31.12.2020) by [The Public Procurement etc. \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2020 \(S.S.I. 2020/468\)](#), regs. 1(2), **4(38)(b)** (with sch. paras. 1-5)
- F51** Reg. 55(6) omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **4(14)(c)** (with reg. 3)

Informing candidates and tenderers

56.—(1) A contracting authority must as soon as possible after reaching a decision concerning the award of a contract, the conclusion of a framework agreement or admittance to a dynamic purchasing system, inform each candidate and tenderer of the decision reached.

(2) Information provided in accordance with paragraph (1) must, where applicable, include the grounds for any decision—

- (a) not to conclude a framework agreement;
- (b) not to award a contract for which there has been a call for competition;
- (c) to recommence the procedure; or

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- (d) not to implement a dynamic purchasing system.
- (3) On request from the candidate or tenderer concerned, the contracting authority must as soon as possible, and in any event within 15 days from receipt of a written request, inform—
 - (a) any unsuccessful candidate of the reasons for the rejection of its request to participate;
 - (b) any unsuccessful tenderer of the reasons for the rejection of its tender, including, for the cases referred to in regulation 43(13) and (14) (technical specifications), the reasons for its decision of non-equivalence or its decision that the works, supplies or services do not meet the performance or functional requirements;
 - (c) any tenderer that has made an admissible tender of the characteristics and relative advantages of the tender selected as well as the name of the successful tenderer or the parties to the framework agreement; and
 - (d) any tenderer that has made an admissible tender of the conduct and progress of negotiations and dialogue with tenderers.
- (4) A contracting authority may decide to withhold certain information referred to in paragraphs (2) and (3), where the release of such information—
 - (a) would impede law enforcement or otherwise be contrary to the public interest;
 - (b) would prejudice the commercial interests of any person; or
 - (c) might prejudice fair competition between economic operators.

Changes to legislation:

The Public Contracts (Scotland) Regulations 2015, Cross Heading: SECTION 5 is up to date with all changes known to be in force on or before 19 February 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- reg. 52 heading substituted by [S.S.I. 2019/112 reg. 3\(34\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 53 heading words substituted by [S.S.I. 2019/112 reg. 3\(35\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- Regulations applied by [2023 c. 54 s. 119\(2\)\(a\)](#)

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

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

- reg. 11(1)(e)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(i\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 11(1)(e)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 3\(11\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 78(1)(i)(ii) and words inserted by [S.S.I. 2019/112 reg. 3\(52\)\(a\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))