SCOTTISH STATUTORY INSTRUMENTS

2016 No. 49

The Utilities Contracts (Scotland) Regulations 2016

PART 1
GENERAL
CHAPTER 3
MATERIAL SCOPE

SECTION 1

Thresholds

Thresholds

- **15.**—(1) These Regulations apply to a procurement where the estimated value of the contract to be awarded (not including VAT) is equal to or greater than—
 - (a) in the case of a supply or service contract or design contest, the amount specified in Article 15(a) of the Utilities Contracts Directive;
 - (b) in the case of a works contract, the amount specified in Article 15(b) of the Utilities Contracts Directive;
 - (c) in the case of a contract for a service listed in Schedule 2 (social and other specified services), the amount specified in Article 15(c) of the Utilities Contracts Directive.
- (2) Where proposed works, acquisition of supplies or provision of services may be procured in the form of separate lots these Regulations do not apply to the award of a contract for a lot where—
 - (a) the estimated value of that lot is less than—
 - (i) 80,000 Euros, in the case of supplies or services; or
 - (ii) 1 million Euros, in the case of works; and
 - (b) the estimated total aggregate value of all such lots to be awarded without application of these Regulations does not exceed 20% of the estimated aggregate value of all the lots calculated in accordance with regulation 16 (methods for calculating the estimated value).
- (3) References in paragraph (1) to the Utilities Contracts Directive are references to that Directive as amended from time to time.
- (4) In this regulation reference to a "contract" includes reference to a framework agreement, dynamic purchasing system and design contest.

Methods for calculating the estimated value

16.—(1) A utility 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 VAT.

- (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 utility provides for prizes or payments to candidates or tenderers it must take them into account when calculating the estimated value.
 - (4) Where a utility is comprised of separate operational units the utility—
 - (a) may calculate the estimated value by reference to each such unit or certain category thereof where that unit or certain category thereof 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 utility 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 these Regulations.
- (6) A utility must not sub-divide a contract with the effect of excluding the contract from the application of these Regulations unless such sub-division is justified by objective reasons.
- (7) The estimated value must be the value estimated at the moment at which the procurement is commenced.
- (8) 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.
- (9) In the case of an innovation partnership the estimated value shall be the total estimated value of the research and development activities to take place during all stages of the partnership together with the estimated value of works, supplies or services to be developed and delivered by the partner.
- (10) In the case of a 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 utility to the contractor.
- (11) In the case of a works or service contract to be awarded in the form of separate lots, the estimated value shall be the total estimated value of all such lots.
- (12) In the case of a contract for supplies which may be awarded in the form of separate lots the estimated value shall be the total estimated value of all such lots and these Regulations apply to each lot accordingly where the aggregate value of the lots is equal to or greater than the relevant threshold referred to in regulation 15 (thresholds).
- (13) In the case of supply or service 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 utility considers 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.
- (14) In the case of a 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; and

- (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.
- (15) In the case of a service contract for a service of a kind mentioned herein, 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; and
 - (c) for design contracts, the fees, commissions payable and any other form of remuneration.
- (16) In the case of a service contract which does not indicate a total price, the estimated value must 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; and
 - (b) in the case of a contract for a term of more than 48 months or a contract without a fixed term, the monthly value multiplied by 48.