
STATUTORY INSTRUMENTS

2006 No. 5

The Public Contracts Regulations 2006

PART 1

GENERAL

Interpretation

2.—(1) In these Regulations—

“to award” means to accept an offer made in relation to a proposed contract;

“buyer profile” means a page on the internet set up by a contracting authority containing one or more of the following: prior information notices, information on ongoing invitations to tender, prospective and concluded contracts, cancelled procedures and useful general information, such as a contact point, a telephone number, a facsimile number, a postal address or an e-mail address;

“carrying out” in relation to a work or works means the construction or the design and construction of that work or those works;

“central purchasing body” means a contracting authority which—

- (a) acquires goods or services intended for one or more contracting authorities;
- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities;

“the Commission” means the European Commission;

“Commission Regulation (EC) No 1564/2005” means Commission Regulation (EC) No 1564/2005 of 7 September 2005⁽¹⁾;

“Common Procurement Vocabulary” means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary⁽²⁾;

“competitive dialogue procedure” means a procedure—

- (a) in which any economic operator may make a request to participate; and
- (b) whereby a contracting authority conducts a dialogue with the economic operators admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements and on the basis of which the economic operators chosen by the contracting authority are invited to tender;

“concessionaire” means a person who has entered into a public works concession contract with a contracting authority;

⁽¹⁾ OJ L 257, 1.10.2005, p.1. The standard forms set out in the Annex to this Regulation are available at the internet address <http://simap.eu.int>.

⁽²⁾ OJ L 340, 16.12.2002, p.1.

“contract documents” means the invitation to tender for or to negotiate a contract, the descriptive document (if any), the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the contracting authority and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto;

“contract notice” means, except in regulation 49, a notice sent to the Official Journal in accordance with these Regulations;

“contracting authority” has the meaning given to it by regulation 3;

“contractor” means a person who offers on the market work or works and—

- (a) who sought, who seeks, or would have wished, to be the person to whom a public works contract is awarded; and
- (b) who is a national of and established in a relevant State;

“CPC” means Central Product Classification of the United Nations⁽³⁾;

“CPV” means Common Procurement Vocabulary;

“design contest” means a competition, particularly in the fields of planning, architecture, civil engineering and data processing—

- (a) which is conducted by or on behalf of a contracting authority and in which that contracting authority invites the entry by economic operators of plans and designs;
- (b) under the rules of which the plans or designs entered will be judged by a jury;
- (c) under which prizes may or may not be awarded; and
- (d) which enables the contracting authority to acquire the use or ownership of plans or designs selected by the jury;

“disabled person” means any person recognised as disabled within the meaning of the Disability Discrimination Act 1995⁽⁴⁾ and “disabled persons” shall be interpreted accordingly;

“disability” has the same meaning as in that Act;

“dynamic purchasing system” means a completely electronic system of limited duration which is—

- (a) established by a contracting authority to purchase commonly used goods, work, works or services; and
- (b) open throughout its duration for the admission of economic operators which—
 - (i) satisfy the selection criteria specified by the contracting authority; and
 - (ii) submit an indicative tender to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person;

“EC Treaty” means the Treaty establishing the European Community signed on 25 March 1957 as amended by the Community Treaties;

“economic operator” has the meaning given to it by regulation 4;

“electronic auction” means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which—

- (a) takes place after the initial evaluation of tenders; and

⁽³⁾ CPC (provisional version). Further information may be obtained from the United Nations website at <http://unstats.un.org>.

⁽⁴⁾ 1995 c. 50. Section 1 is amended by S.I.2005/1117 in relation to Northern Ireland. Sections 2 and 3 are amended by sections 18 and 19(1) of, and Schedule 1 to, the Disability Discrimination Act 2005 (c. 13). There are other amendments which are not relevant to these Regulations.

- (b) enables tenders to be ranked using automatic evaluation methods;
- “electronic means” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;
- “established” has the same meaning as in the Community Treaties;
- “European standard” has the meaning given to it in regulation 9(1);
- “financial year” means, unless the context otherwise requires, the period of 12 months ending on the date in any year in respect of which the accounts of any person are prepared;
- “framework agreement” means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies;
- “goods” includes electricity, substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under a public supply contract, and any ship, aircraft or vehicle;
- “government department” includes a Northern Ireland department or the head of that department;
- “Government Procurement Agreement” means the Agreement on Government Procurement between certain parties to the World Trade Organisation (WTO) signed in Marrakesh on 15 April 1994⁽⁵⁾;
- “GPA” means the Government Procurement Agreement;
- “indicative tender” means a tender prepared by an economic operator seeking admission to a dynamic purchasing system which sets out the terms on which it would be prepared to enter into a contract with a contracting authority should that contracting authority propose to award a contract under the system;
- “international standard” has the meaning given to it in regulation 9(1);
- “letter” has the same meaning as in the Postal Services Act 2000⁽⁶⁾;
- “Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom and includes the Treasury;
- “national of a relevant State” means, in the case of a person who is not an individual, a person formed in accordance with the laws of a relevant State and which has its registered office, central administration or principal place of business in a relevant State;
- “negotiated procedure” means a procedure leading to the award of a contract whereby the contracting authority negotiates the terms of the contract with one or more economic operators selected by it;
- “Office of Government Commerce” means the office of the Treasury having that title⁽⁷⁾;
- “Official Journal” means the Official Journal of the European Union;
- “open procedure” means a procedure leading to the award of a contract whereby all interested economic operators may tender for the contract;

⁽⁵⁾ Cm 2575. As at 1st January 2000, parties to the Government Procurement Agreement other than member States were Aruba, Canada, Hong Kong Special Administrative Region, Iceland, Israel, Japan, Republic of Korea, Liechtenstein, Norway, , Singapore, Switzerland and the United States of America.

⁽⁶⁾ 2000 c. 26.

⁽⁷⁾ The address of the Office of Government Commerce is 1 Horse Guards Road, London, SW1A 2HQ.

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 11;

“public contract” means a public services contract, a public supply contract or a public works contract;

“Public Sector Directive” means Directive [2004/18/EC](#) of the European Parliament and of the Council of 31 March 2004⁽⁸⁾;

“public services contract” means a contract, in writing, for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services but does not include—

- (a) a public works contract; or
- (b) a public supply contract;

but a contract for both goods and services shall be considered to be a public services contract if the value of the consideration attributable to those services exceeds that of the goods covered by the contract and a contract for services which includes activities specified in Schedule 2 that are only incidental to the principal object of the contract shall be considered to be a public services contract;

“public supply contract” means a contract, in writing, for consideration (whatever the nature of the consideration)—

- (a) for the purchase of goods by a contracting authority (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event), or
- (b) for the hire of goods by a contracting authority (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not);

and for any siting or installation of those goods, but where under such a contract services are also to be provided, the contract shall only be a public supply contract where the value of the consideration attributable to the goods and any siting or installation of the goods is equal to or greater than the value attributable to the services;

“public telecommunications services” means telecommunications services the provision of which a relevant State has specifically assigned, in particular, to one or more telecommunications entities;

“public works concession contract” means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract;

“public works contract” means a contract, in writing, for consideration (whatever the nature of the consideration)—

- (a) for the carrying out of a work or works for a contracting authority; or
- (b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements;

“relevant State” has the meaning given to it by regulation 4(4);

“restricted procedure” means a procedure leading to the award of a contract whereby only economic operators selected by the contracting authority may submit tenders for the contract;

“Schedule 1 entity” means an entity specified in Schedule 1 in accordance with its inclusion in the list of central government bodies in Annex I to the GPA, and for which these Regulations make particular provisions;

(8) OJ L 134, 30.4.2004, p.114.

“services concession contract” means a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract;

“services provider” means a person who offers on the market services and—

- (a) who sought, who seeks, or who would have wished—
 - (i) to be the person to whom a public services contract is awarded; or
 - (ii) to participate in a design contest; and
- (b) who is a national of and established in a relevant State;

“ship” includes any boat and other description of a vessel used in navigation;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of vapour;

“supplier” means a person who offers on the market goods for purchase or hire and—

- (a) who sought, who seeks, or who would have wished, to be the person to whom a public supply contract is awarded; and
- (b) who is a national of and established in a relevant State;

“telecommunications services” means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television;

“Utilities Directive” means Directive [2004/17/EC](#) of the European Parliament and of the Council of 31st March 2004⁽⁹⁾;

“work” means the outcome of any works which is sufficient of itself to fulfil an economic and technical function;

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971⁽¹⁰⁾;

“works” means any of the activities specified in Schedule 2;

“written” or “in writing” means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and it may include information transmitted and stored by electronic means; and

“year” means a calendar year.

(2) Subject to paragraph (3), in these Regulations—

- (a) “a Part A services contract” is a contract under which services specified in Part A of Schedule 3 are to be provided;
- (b) “a Part B services contract” is a contract under which services specified in Part B of Schedule 3 are to be provided;

(3) Where services specified in both Parts A and B of Schedule 3 are to be provided under a single contract, then the contract shall be treated as—

- (a) a Part A services contract if the value of the consideration attributable to the services specified in Part A is greater than that attributable to those specified in Part B; and
- (b) a Part B services contract if the value of the consideration attributable to the services specified in Part B is equal to or greater than that attributable to those specified in Part A.

(4) Where a thing is required to be done under these Regulations—

⁽⁹⁾ OJ L 134, 30.4.2004, p 1.

⁽¹⁰⁾ 1971 c. 80. There are amendments to this Act which are not relevant to these Regulations.

- (a) within a certain period after an action is taken, the day on which that action is taken shall not be counted in the calculation of that period;
- (b) within a certain period, that period must include at least two working days; and
- (c) except for regulation 32(3), within a certain period and the last day of that period is not a working day, the period shall be extended to include the next working day.