
STATUTORY INSTRUMENTS

2015 No. 102

The Public Contracts Regulations 2015

PART 4

MISCELLANEOUS OBLIGATIONS

CHAPTER 7

ADDITIONAL RULES FOR PART 2 PROCUREMENTS

Scope of Chapter 7

105.—(1) This Chapter applies to procurements within the scope of Part 2.

(2) But—

- (a) this Chapter does not apply to the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(1);
- (b) regulations 106 and 108 do not apply where the contracting authority is a maintained school or an Academy.

Publication of information on Contracts Finder where contract notices are used

106.—(1) Where a contracting authority sends a contract notice to the EU Publications Office for publication, the contracting authority shall cause information to be published on Contracts Finder within 24 hours of the time when the contracting authority becomes entitled, in accordance with regulation 52(3) and (4), to publish the notice at national level.

(2) The information to be published on Contracts Finder shall include at least the following:—

- (a) the internet address at which the procurement documents are accessible;
- (b) the time by which any interested economic operator must respond if it wishes to be considered;
- (c) how and to whom such an economic operator is to respond; and
- (d) any other requirements for participating in the procurement.

(3) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to the form and manner in which information is to be published on Contracts Finder.

(4) Paragraph (5) applies if such guidance confirms that, for the time being, arrangements have been put in place by or on behalf of the Cabinet Office under which the information referred to in paragraph (2) will, without further action by contracting authorities, be extracted and published on Contracts Finder following the publication of contract notices by the EU Publications Office.

(5) In those circumstances, contracting authorities shall be deemed to have complied with paragraph (1) by virtue of sending the contract notice to the EU Publications Office for publication in accordance with regulation 51.

Qualitative selection

107.—(1) Contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to the qualitative selection of economic operators.

(2) In this regulation, “qualitative selection” means the processes by which, in accordance with regulations 57 to 65, contracting authorities—

- (a) select economic operators to participate in procurement procedures; and
- (b) decide whether to exclude economic operators from such participation.

(3) Such guidance may, in particular, relate to—

- (a) the use of questionnaires for the purposes of qualitative selection, including the avoidance of burdensome, excessive or disproportionate questions;
- (b) the assessment of information relevant to qualitative assessment.

(4) Where a contracting authority conducts a procurement in a way which represents a reportable deviation from the guidance issued under this regulation, the contracting authority shall send to the Cabinet Office a report explaining the deviation.

(5) For that purpose, something is a reportable deviation only if it falls within criteria laid down for that purpose in guidance issued under this regulation.

Publication of information on Contracts Finder about contracts awarded

108.—(1) Paragraph (2) applies where a contracting authority—

- (a) sends a contract award notice to the EU Publications Office for publication; or
- (b) awards a contract based on a framework agreement.

(2) In those circumstances, the contracting authority shall cause at least the following information to be published on Contracts Finder:—

- (a) the name of the contractor;
- (b) the date on which the contract was entered into;
- (c) the value of the contract.

(3) But the contracting authority may withhold information from publication where its release—

- (a) would impede law enforcement or would otherwise be contrary to the public interest,
- (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
- (c) might prejudice fair competition between economic operators.

(4) Contracting authorities shall comply with paragraph (2) within a reasonable time.

(5) But where a contracting authority sends, or intends to send, a contract award notice to the EU Publications Office for publication, the contracting authority shall not cause the information to be published on Contracts Finder earlier than the time at which the contracting authority becomes entitled, in accordance with regulation 52(3) and (4), to publish the notice at national level.

(6) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office on—

- (a) the form and manner in which the information is to be published on Contracts Finder; and

(b) what is a reasonable time (having regard, where relevant, to paragraph (5)) for the purposes of paragraph (4).

(7) Paragraph (8) applies if such guidance confirms that, for the time being, arrangements have been put in place by or on behalf of the Cabinet Office under which the information referred to in paragraph (2) will, without further action by contracting authorities, be extracted and published on Contracts Finder following the publication of contract notices by the EU Publications Office.

(8) In those circumstances, contracting authorities shall be deemed to have complied with paragraph (2) by virtue of sending a contract award notice to the EU Publications Office for publication in accordance with regulation 51.

(9) In this regulation, “contract award notice” means a contract award notice referred to in regulation 50 or 75(3).

CHAPTER 8

BELOW-THRESHOLD PROCUREMENTS

Scope of Chapter 8

109.—(1) Subject to paragraphs (2) and (5), this Chapter applies to procurements by contracting authorities with respect to public contracts where Part 2 does not apply because the estimated value of the procurement is less than the relevant threshold mentioned in regulation 5.

(2) This Chapter does not apply in any of the following cases:—

- (a) where Part 2 would not have applied even if the estimated value of the procurement had been equal to or greater than the relevant threshold mentioned in regulation 5;
- (b) where the contracting authority is a central government authority and the procurement has a value net of VAT estimated to be less than £10,000;
- (c) where the contracting authority is—
 - (i) a sub-central contracting authority or an NHS Trust, and
 - (ii) the procurement has a value net of VAT estimated to be less than £25,000;
- (d) the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013(2).

(3) For the purposes of paragraph (2)(b) and (c) and regulation 111(2), the estimated value of the procurement shall be calculated on the basis set out in regulation 6(1) to (5), (7) to (10) and (16) to (19), but as if the reference to a call for competition in regulation 6(7) were a reference to the publication of information on Contracts Finder in accordance with regulation 110.

(4) A procurement shall not be subdivided with the effect of preventing it from falling within the scope of this Chapter, unless justified by objective reasons.

(5) Regulations 110 and 112 do not apply where the contracting authority is a maintained school or an Academy.

Publication of contract opportunities on Contracts Finder

110.—(1) Paragraph (2) applies where a contracting authority advertises a contract award opportunity.

(2) In those circumstances, the contracting authority shall publish information about the opportunity on Contracts Finder, regardless of what other means it uses to advertise the opportunity.

(3) Where a contracting authority is required by paragraph (2) to publish information on Contracts Finder, it shall do so within 24 hours of the time when it first advertises the contract award opportunity in any other way.

(4) A contracting authority may publish on Contracts Finder information about a contract award opportunity even if the contracting authority does not advertise the opportunity in any other way.

(5) For the purposes of this regulation—

(a) a contracting authority advertises an opportunity if it does anything to put the opportunity in the public domain or bring the opportunity to the attention of economic operators generally or to any class or description of economic operators which is potentially open-ended, with a view to receiving responses from economic operators who wish to be considered for the award of the contract; and

(b) accordingly, a contracting authority does not advertise an opportunity where it makes the opportunity available only to a number of particular economic operators who have been selected for that purpose (whether ad hoc or by virtue of their membership of some closed category such as a framework agreement), regardless of how it draws the opportunity to the attention of those economic operators.

(6) In this regulation, “contract award opportunity” means the opportunity to be awarded a public contract by a contracting authority, regardless of how specific the opportunity is.

(7) For example, advertising by means of techniques similar to prior information notices used to call for competition under Part 2 amounts to the advertising of contract award opportunities even though the specific contracts that may in due course be awarded within the scope of such procurements are not identified individually in the advertising.

(8) The information to be published on Contracts Finder shall include at least the following:—

(a) the time by which any interested economic operator must respond if it wishes to be considered;

(b) how and to whom such an economic operator is to respond; and

(c) any other requirements for participating in the procurement.

(9) For the purposes of paragraph (8)(a), the time shall be such as to allow the economic operators a sufficient but not disproportionate period of time within which to respond.

(10) The contracting authority shall ensure that the information remains published on Contracts Finder until the time mentioned in paragraph (8)(a).

(11) Paragraph (10) does not apply where the procedure is, for any reason, abandoned before that time.

(12) Where a contracting authority publishes information on Contracts Finder under this regulation, the contracting authority shall—

(a) by means of the internet, offer unrestricted and full direct access free of charge to any relevant contract documents; and

(b) specify in the information published on Contracts Finder the internet address at which those documents are accessible.

(13) But paragraph (12)(a) does not require a contracting authority to provide such access where the access cannot be offered for a relevant reason.

(14) In paragraph (13), “relevant reason” means any reason which, in accordance with regulation 53(3) and (4), would have applied if the procurement had been covered by Part 2 and the relevant contract documents had been procurement documents.

(15) For the purposes of this regulation, a document is a relevant contract document if—

- (a) it contains information about the opportunity which goes beyond the information published on Contracts Finder, and
- (b) that information is intended by the contracting authority to be taken into account by those responding to the advertisement.

(16) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to—

- (a) the form and manner in which information is to be published on Contracts Finder;
- (b) what is a sufficient but not disproportionate period of time for the purposes of paragraph (9).

Assessing suitability etc

111.—(1) A contracting authority shall not include a pre-qualification stage in a procurement.

(2) Where the relevant threshold for the purposes of regulation 109(1) is that mentioned in regulation (5)(1)(a) or (d), paragraph (1) of this regulation applies only if the estimated value of the procurement is less than the lower threshold mentioned in paragraph (3).

(3) The lower threshold is the threshold mentioned in—

- (a) regulation 5(1)(b) where the contracting authority is a central government authority;
- (b) regulation 5(1)(c) where the contracting authority is a sub-central contracting authority.

(4) In paragraph (1), “pre-qualification stage” means a stage in the procurement process during which the contracting authority assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage of the process.

(5) In any event, contracting authorities may ask candidates to answer suitability assessment questions only if each such question is—

- (a) relevant to the subject-matter of the procurement; and
- (b) proportionate.

(6) In paragraph (5), “suitability assessment question” means a question which relates to information or evidence which the contracting authority requires for the purpose of assessing whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

(7) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office, which may include guidance on how to establish and assess, without infringing paragraph (5), whether candidates meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.

(8) Where a contracting authority conducts a procurement in a way which represents a reportable deviation from the guidance issued under paragraph (7), the contracting authority shall send to the Cabinet Office a report explaining the deviation.

(9) For that purpose, something is a reportable deviation only if it falls within criteria laid down for that purpose in guidance issued under paragraph (7).

(10) In this regulation, “candidate” means an economic operator that wishes to be considered for the award of a public contract.

Publication of information on Contracts Finder about contracts awarded

112.—(1) Where a public contract is awarded, the contracting authority shall, within a reasonable time, publish on Contracts Finder at least the following information:—

- (a) the name of the contractor;
 - (b) the date on which the contract was entered into;
 - (c) the value of the contract;
 - (d) whether the contractor is a SME or VCSE.
- (2) But the contracting authority may withhold information from publication where its release—
- (a) would impede law enforcement or would otherwise be contrary to the public interest,
 - (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
 - (c) might prejudice fair competition between economic operators.
- (3) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to—
- (a) the form and manner in which the information is to be published on Contracts Finder; and
 - (b) what is a reasonable time for the purposes of paragraph (1).
- (4) In paragraph (1)(d)—
- “SME” means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises⁽³⁾; and
- “VCSE” means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

CHAPTER 9

MISCELLANEOUS PROVISIONS

Payment of undisputed invoices within 30 days by contracting authorities, contractors and subcontractors

- 113.**—(1) This regulation applies to all public contracts except the following:—
- (a) contracts for the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013⁽⁴⁾;
 - (b) contracts awarded by a contracting authority which is a maintained school or an Academy.
- (2) Contracting authorities shall ensure that every public contract which they award contains suitable provisions to require the following:—
- (a) that any payment due from the contracting authority to the contractor under the contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed;
 - (b) that any invoices for payment submitted by the contractor are considered and verified by the contracting authority in a timely fashion and that undue delay in doing so is not to be sufficient justification for failing to regard an invoice as valid and undisputed; and
 - (c) that any subcontract awarded by the contractor contains suitable provisions to impose, as between the parties to the subcontract—
 - (i) requirements to the same effect as those which sub-paragraphs (a) and (b) require to be imposed as between the parties to the public contract; and

⁽³⁾ OJ No L 124, 20.5.2003, p.36.

⁽⁴⁾ [S.I. 2013/500](#).

- (ii) a requirement for the subcontractor to include in any subcontract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by this sub-paragraph (c).
- (3) Paragraph (2) is without prejudice to any contractual or statutory provision under which any payment is to be made earlier than the time required by that paragraph.
- (4) In complying with paragraph (2), contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office.
- (5) Such guidance may, in particular, recommend model provisions, including provisions defining the circumstances in which an invoice is to be regarded as being, or as having become, valid and undisputed including, for example—
 - (a) provisions deeming an invoice to have become valid and undisputed if not considered and verified in a timely manner; and
 - (b) addressing what is to be considered, for that purpose, to be a timely manner in various circumstances.
- (6) To the extent that a public contract does not contain express provisions dealing with any of the matters which, in accordance with paragraph (2), should have been contained in that contract or subcontract, it shall be an implied term of the contract that—
 - (a) any payment due under it from the contracting authority to the contractor is to be made no later than the end of a period of 30 days from the date on which the contracting authority completes any process of verification that the invoice is valid and undisputed;
 - (b) the contracting authority is to consider and verify any invoice submitted by the contractor in a timely manner with a view to ascertaining whether the invoice is valid and undisputed; and
 - (c) the contractor will include in any subcontract which it awards provisions—
 - (i) imposing, as between the parties to that subcontract, requirements to the same effect as those which sub-paragraphs (a) and (b) refer to as between the parties to the public contract, and
 - (ii) requiring the subcontractor party to that subcontract to include in any subcontract which it in turn awards provisions imposing, as between the parties to that subcontract, requirements to the same effect as those referred to in paragraphs (i) and (ii) of this sub-paragraph.
- (7) Every financial year, each contracting authority shall publish on the internet statistics showing, for the preceding financial year, how far the contracting authority has actually complied with its obligations under this regulation to make payments within 30 days, including—
 - (a) the proportion of invoices that were paid in accordance with those obligations, expressed as a percentage of the total number of invoices that were, or should have been, paid in accordance with those obligations;
 - (b) the total amount of any liability (whether statutory or otherwise) to pay interest which accrued by virtue of circumstances amounting to a breach of those obligations; and
 - (c) the total amount of interest actually paid in discharge of any such liability (including any which had accrued before the beginning of the period to which the statistics relate).
- (8) In paragraph (7), “publish on the internet” means—
 - (a) make freely available on the internet; and
 - (b) maintain such availability, subject to temporary interruptions for technical reasons, until the publication under paragraph (7) of the statistics for the following financial year.

(9) In complying with paragraph (7), contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office.

(10) Such guidance may, in particular, recommend model templates for presenting the statistics.

(11) In this regulation—

“financial year” means the period in respect of which the accounts of the contracting authority are prepared;

“subcontract” means a contract between two or more suppliers (at any stage of remoteness from the contracting authority in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of a public contract; and

“supplier” means a party to a contract or subcontract under which that party is to execute any works, supply any products or provide any services.

General provisions applicable to Part 4

114.—(1) A material failure to comply with any requirement of this Part does not, of itself, affect the validity of a public contract that has been entered into.

(2) Nothing in this Part requires a contracting authority to disclose any information if it considers that the disclosure would be contrary to the security interests of the United Kingdom.