
STATUTORY INSTRUMENTS

2021 No. 1221

PUBLIC PROCUREMENT

The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021

<i>Made</i>	- - - -	<i>29th October 2021</i>
<i>Laid before Parliament</i>		<i>1st November 2021</i>
<i>Coming into force</i>	- -	<i>1st January 2022</i>

The Minister for the Cabinet Office makes these Regulations in exercise of the powers conferred by sections 1(1)(a), 4(1)(c) and 5(1) of the Trade Act 2021⁽¹⁾, regulations 5A and 84A(1) and (3) of the Public Contracts Regulations 2015⁽²⁾, regulations 9A and 65ZA(1) and (3) of the Concession Contracts Regulations 2016⁽³⁾ and regulations 16A and 119A(1) and (3) of the Utilities Contracts Regulations 2016⁽⁴⁾.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 and come into force on 1st January 2022.

(2) The amendments made by these Regulations have the same extent as the provisions to which they relate.

Amendments to the Defence and Security Public Contracts Regulations 2011

2.—(1) The Defence and Security Public Contracts Regulations 2011⁽⁵⁾ are amended as follows.

(2) For “net”, where it occurs in the following places, substitute “inclusive”—

- (a) in regulation 9 (thresholds)—
 - (i) paragraph (1);

(1) 2021 c. 10. See the definition of “appropriate authority” in section 5.

(2) S.I. 2015/102. Regulations 5A and 84A were inserted by S.I. 2020/1319; there are other amending instruments but none is relevant.

(3) S.I. 2016/273. Regulations 9A and 65ZA were inserted by S.I. 2020/1319; there are other amending instruments but none is relevant.

(4) S.I. 2016/274. Regulations 16A and 119A were inserted by S.I. 2020/1319; there are other amending instruments but none is relevant.

(5) S.I. 2011/1848.

- (ii) paragraph (5);
- (b) regulation 42(1) (thresholds and rules on advertising).

Amendments to the Public Contracts Regulations 2015

- 3.—(1) The Public Contracts Regulations 2015 are amended as follows.
- (2) In regulation 5 (threshold amounts), in paragraph (1)—
- (a) in sub-paragraph (a), for “£4,733,252” substitute “£5,336,937”;
 - (b) in sub-paragraph (b), for “£122,976” substitute “£138,760”;
 - (c) in sub-paragraph (c), for “£189,330” substitute “£213,477”.
- (3) For “net”, where it occurs in the following places, substitute “inclusive”—
- (a) regulation 5(1);
 - (b) in regulation 6 (methods for calculating the estimated value of procurement)—
 - (i) paragraph (1);
 - (ii) paragraph (8);
 - (iii) paragraph (9);
 - (iv) paragraph (14);
 - (c) in regulation 13(1) (contracts subsidised by contracting authorities)—
 - (i) sub-paragraph (a);
 - (ii) sub-paragraph (b);
 - (d) in regulation 78 (scope of section 8)—
 - (i) paragraph (2);
 - (ii) paragraph (3);
 - (e) in regulation 109(2) (scope of Chapter 8)—
 - (i) sub-paragraph (b);
 - (ii) sub-paragraph (c)(ii).

Amendments to the Concession Contracts Regulations 2016

- 4.—(1) The Concession Contracts Regulations 2016 are amended as follows.
- (2) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts)—
- (a) in paragraph (1) for “£4,733,252” substitute “£5,336,937”;
 - (b) in paragraph (3), for “net” substitute “inclusive”.

Amendments to the Utilities Contracts Regulations 2016

- 5.—(1) The Utilities Contracts Regulations 2016 are amended as follows.
- (2) In regulation 16 (threshold amounts), in paragraph 1—
- (a) in sub-paragraph (a), for “£378,660” substitute “£426,955”;
 - (b) in sub-paragraph (b), for “£4,733,252” substitute “£5,336,937”.
- (3) For “net”, where it occurs in the following places, substitute “inclusive”—
- (a) regulation 16(1);

- (b) in regulation 17 (methods for valuing the estimate value of the procurement)—
 - (i) paragraph (1);
 - (ii) paragraph (8);
 - (iii) paragraph (9);
 - (iv) paragraph (14);
- (c) in regulation 94 (scope of Chapter 2)—
 - (i) sub-paragraph (a);
 - (ii) sub-paragraph (b).

Interpretation of Part 3

6.—(1) In this Part—

“the Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—

- (a) the Defence and Security Public Contracts Regulations 2011;
- (b) the Public Contracts Regulations 2015;
- (c) the Concession Contracts Regulations 2016;
- (d) the Utilities Contracts Regulations 2016.

(2) In this Part, the following have the same meaning as in the applicable Procurement Regulations—

- (a) contracting authority;
- (b) design contest;
- (c) dynamic purchasing system;
- (d) economic operator;
- (e) framework agreement;
- (f) utility.

Transitional provisions

7.—(1) Nothing in these Regulations affects any procurement commenced before these Regulations come into force.

(2) For the purposes of paragraph (1), a procurement is commenced before these Regulations come into force if, before that date—

- (a) a notice has been sent to the UK e-notification service in accordance with applicable Procurement Regulations in order to—
 - (i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system; or
 - (ii) publicise an intention to hold a design contest;
- (b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system; or
- (c) the contracting authority or utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract, framework agreement or dynamic purchasing system; or

(ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract, framework agreement or dynamic purchasing system.

(3) For the purposes of this regulation, a procurement covers the whole of the procedures which stem from that commencement.

(4) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(5) A procedure commenced as described in paragraph (2)(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

29th October 2021

Theodore Agnew
Minister of State
Cabinet Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to United Kingdom public procurement regulations to update certain financial thresholds, which govern the procedures for the award of public contracts for goods, works and services, following a review of those thresholds in accordance with regulation 5A of the Public Contracts Regulations 2015, regulation 9A of the Concession Contracts Regulations 2016 and regulation 16A of the Utilities Contracts Regulations 2016. This review was previously undertaken by the European Commission to ensure the thresholds continue to correspond with the relevant thresholds laid down in the World Trade Organisation's Agreement on Government Procurement ("GPA"). Following the United Kingdom's exit from the EU, and subsequent accession to the GPA⁽⁶⁾ as a member in its own right, this review requirement was conferred on the Minister for the Cabinet Office by the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. These Regulations also change the calculation of the estimated value of a procurement based on the total amount payable without making a deduction for value added tax, in order to fully implement the United Kingdom's obligations under the GPA⁽⁷⁾.

⁽⁶⁾ Cmnd. 487.

⁽⁷⁾ As signed at Marrakesh on 15th April 1994 and amended on or before 16th May 2021.