
SCOTTISH STATUTORY INSTRUMENTS

2015 No. 446

The Public Contracts (Scotland) Regulations 2015

PART 2

RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE

CHAPTER 3

PARTICULAR PROCUREMENT REGIMES

SECTION 7

Social and Other Specific Services

Award of contracts for social and other specific services

74. A public contract or framework for social and other specific services listed in Schedule 3 must be awarded in accordance with this Section, where the value of the contract or framework is equal to or greater than the threshold indicated in regulation 5(1)(d) (thresholds).

Publication of notices

75.—(1) A contracting authority intending to award a public contract or framework for the services referred to in regulation 74 (award of contracts for social and other specific services) must make known its intention by means of—

- (a) a contract notice, which must contain the information set out in Part H of Annex V to the Directive;^{F1} ...

^{F1}(b)

(2) Paragraph (1) shall not apply where a negotiated procedure without prior publication could have been used in accordance with regulation 33 (use of the negotiated procedure without prior publication) for the award of the contract.

(3) A contracting authority that has awarded a contract or framework for the services referred to in regulation 74 (award of contracts for social and other specific services) must make known the results of the procurement procedure by means of a contract award notice, which must contain the information referred to in Part J of Annex V to the Directive.

(4) A contracting authority may, however, group notices referred to in paragraph (3) on a quarterly basis, in which case it must [^{F2}submit] the grouped notices within 30 days of the end of each quarter.

(5) A contracting authority must [^{F3}submit] the notices, referred to in this regulation, for publication in accordance with regulation 52 ([^{F4}publication on the UK e-notification service]).

Changes to legislation: The Public Contracts (Scotland) Regulations 2015, Cross Heading: SECTION 7 is up to date with all changes known to be in force on or before 09 June 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. (See end of Document for details) View outstanding changes

Textual Amendments

- F1** Reg. 75(1)(b) and word omitted (30.5.2023) by virtue of The Public Procurement (Miscellaneous Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/124), regs. 2, **4(16)** (with reg. 3)
- F2** Word in reg. 75(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(52)(a)** (with sch. paras. 1-5)
- F3** Word in reg. 75(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(52)(b)(i)** (with sch. paras. 1-5)
- F4** Words in reg. 75(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(52)(b)(ii)** (with sch. paras. 1-5)

Principles of awarding contracts

76.—(1) A contracting authority must determine the procedure that is to be applied in connection with the award of a contract or framework subject to this Section and may take into account—

- (a) the specificities of the services in question; and
- (b) the requirements and needs of users.

(2) The procedure must be at least sufficient to ensure compliance with the principles of transparency and equal treatment of economic operators.

(3) The procedure must provide for the exclusion from participation in the procurement of any economic operator in relation to which mandatory exclusion referred to in regulation 58(1) and (3) (exclusion grounds) applies and the contracting authority must not award a contract or framework agreement to such economic operator.

(4) In particular, where, in accordance with regulation 75 (publication of notices), a contract notice^{F5}... has been published in relation to a procurement, the contracting authority must, except in the circumstances mentioned in paragraph (5), conduct that procurement, and award any resulting contract, in conformity with the information contained in the notice about—

- (a) conditions for participation;
- (b) time limits for contacting the contracting authority; and
- (c) the award procedure to be applied.

(5) The contracting authority may, however, conduct the procurement, and award any resulting contract, in a way which is not in conformity with that information, but only if all of the following conditions are met—

- (a) the failure to conform does not, in the particular circumstances, amount to a breach of the principles of transparency and equal treatment of economic operators;
- (b) the contracting authority has—
 - (i) after giving due consideration to the matter, concluded that sub-paragraph (a) is applicable;
 - (ii) documented that conclusion and the reasons for it in accordance with regulation 83(7) and (8) (reporting and documentation requirements); and
 - (iii) informed the participants of the respects in which the contracting authority intends to proceed in a way which is not in accordance with the information contained in the notice.

(6) In paragraph (5)(b)(iii), “participants” means any economic operators which have responded to the notice and not been informed by the contracting authority that they are no longer under consideration for the award of a contract within the scope of the procurement concerned.

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(7) All time limits imposed upon economic operators for the purposes of this regulation, whether for responding to a contract notice or taking any other steps in the relevant procedure, must be reasonable and proportionate having regard to the nature of the requirement and the needs of service users.

(8) Without prejudice to the generality of paragraph (1), a contracting authority may apply procedures for the purposes of this regulation which correspond (with or without variations) to procedures, techniques or other features otherwise provided for in these Regulations, as well as procedures which do not.

(9) In relation to the award of contracts subject to this regulation, a contracting authority may take into account—

- (a) the need to ensure quality, continuity, accessibility, affordability, availability and comprehensiveness of the services;
- (b) the specific needs of different categories of users, including disadvantaged and vulnerable groups;
- (c) the involvement and empowerment of users;
- (d) innovation; and
- (e) any other relevant consideration.

(10) A contracting authority must award a contract or framework for services listed in Schedule 3 on the basis of the tender representing the best price quality ratio, taking into account quality and sustainability criteria for such services.

Textual Amendments

- F5** Words in [reg. 76\(4\)](#) omitted (30.5.2023) by virtue of [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **4(17)** (with [reg. 3](#))

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Changes and effects yet to be applied to :

- 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))