
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 94

**The Public Contracts and Utilities Contracts
(Scotland) Amendment Regulations 2008**

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Public Contracts and Utilities Contracts (Scotland) Amendment Regulations 2008 and come into force on 31st March 2008.

(2) In these Regulations, the “Public Contracts Regulations” means the Public Contracts (Scotland) Regulations 2006(1) and the “Utilities Contracts Regulations” means the Utilities Contracts (Scotland) Regulations 2006(2).

(3) These Regulations extend to Scotland only.

Amendments to the Public Contracts Regulations

2.—(1) The Public Contracts Regulations are amended as follows.

(2) In regulation 3 (contracting authorities)—

(a) in paragraph (1)(j) after “scheme” insert “or administration scheme”; and

(b) after paragraph (1)(l) insert—

“(la) a joint fire and rescue board constituted by an amalgamation scheme under section 2 of the Fire (Scotland) Act 2005(3);”.

(3) In regulation 5 (application)—

(a) in paragraph (1)—

(i) omit “and regulation 8(21)”; and

(ii) after “dynamic purchasing system” where it second appears insert “referred to in paragraph (2) or”; and

(b) in paragraph (2), after “Part B services contract” insert “or a framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded”.

(4) In regulation 8 (thresholds)—

(a) in paragraph (1), after “These Regulations” insert “, except paragraph (21) of this regulation,”;

(b) for paragraph (4)(b) substitute—

“(b) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1 and 64228200-2 within category 5 of Part A of Schedule 3;” and

(1) [S.S.I. 2006/1](#) as amended by [S.S.I. 2007/565](#).

(2) [S.S.I. 2006/2](#) as amended by [S.S.I. 2007/565](#).

(3) [2005 asp 5](#).

- (c) in paragraph (21) after “advertising” insert “and follow a procedure leading to the award of the contract”.
- (5) In regulation 13(a)(ii) (use of the negotiated procedure with prior publication of a contract notice) for “or 16(7)” substitute “, 16(7) or 18(10)”.
- (6) In regulation 14 (use of the negotiated procedure without prior publication of a contract notice)–
- (a) for paragraph (1)(a)(i) substitute–
- “(i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract all of, and only, those economic operators which submitted a tender following an invitation made during the course of the discontinued open procedure, restricted procedure or competitive dialogue procedure (not being a tender or economic operator which was excluded in accordance with regulation 15(11), 16(7) or 18(10));” and
- (b) in paragraph (5)(b) for “regulation 11” substitute “regulation 8”.
- (7) In regulation 23 (criteria for the rejection of economic operators)–
- (a) in paragraph (4)(j) for “(7), (8) and (9)” substitute “(7), (7A), (7B), (8), (8A), (8B) and (9)”;
- (b) after paragraph (7) insert–
- “(7A) An economic operator established in Cyprus shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if–
- (a) in relation to procedures for the award of a public services contract or a public supply contract the economic operator is either–
- (i) certified as incorporated by the Registrar of Companies and Official Receiver (Εφορoς Εταιρειών Χαι Επσημοζ Παραλή ατηζ); or
- (ii) certified as having declared on oath that it is carrying on business in the trade in question in Cyprus at a specific place of business and under a specific trading name; or
- (b) in relation to procedures for the award of a public works contract the economic operator is certified by the Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφηζ Χαι Ελέγχου Εργοληπτών ΟτΧοδομτΧών Χαι ΤεχντΧών Εργων) according to the Registration and Audit of Civil Engineering and Building Contractors Law of Cyprus.
- (7B) An economic operator established in Malta shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if–
- (a) the economic operator produces its “numru ta' reġistrazzjoni tat- Taxxa tal- Valur Miżjud (VAT) u n- numru tal-liĊenzja ta' kummerĊ and
- (b) where the economic operator is a member of a partnership or is a company, it produces the relevant registration number as issued by the Malta Financial Services Authority.”; and
- (c) after paragraph (8) insert–
- “(8A) In relation to procedures for the award of a public services contract, an economic operator established in Hungary shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if it is certified as being entitled to be engaged in the trade in question in Hungary.
- (8B) In relation to procedures for the award of a public supply contract, an economic operator established in Spain shall be treated as registered on the professional or trade

register for the purposes of paragraph (4)(j) if it is certified as having declared on oath that it is entitled to be engaged in the trade in question in Spain.”

(8) In regulation 31(3) (contract award notice) omit “which has been concluded in accordance with regulation 19”.

(9) In regulation 32(2)(a) (information about contract award procedures) omit “or”.

(10) In regulation 33(5) (design contests), for sub-paragraph (a) substitute–

“(a) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1 and 64228200-2 within category 5 of Part A of Schedule 3;”.

(11) In regulation 37 (sub-contracting the work or works to be carried out under a public works concession contract)–

(a) for paragraph (4)(b) substitute–

“(b) which the concessionaire does not intend to enter into with an economic operator–

(i) which is a member of the group of economic operators which acted jointly for the purpose of obtaining the public works concession contract; or

(ii) related to it or any member of the group mentioned in paragraph (i); and”.

(b) for paragraph (13) substitute–

“(13) A contracting authority shall require applicants for a public works concession contract to submit with the application a list of–

(a) all economic operators which are related to the applicant, and

(b) all economic operators which are related to the economic operators referred to in sub-paragraph (a),

and to update the list from time to time to take account of any changes in the economic operators referred to in sub-paragraphs (a) and (b).”.

(12) In Schedule 1 (GPA annex 1 contracting authorities) under the entry for the Department for Culture, Media and Sport, for “National History Museum” substitute “Natural History Museum”.

(13) In Schedule 3 (categories of services) in category 24 of Part B, for “Educational and vocational health services”, substitute “Educational and vocational education services”.

(14) In Schedule 4 (extension to non-member states) in the table, omit the entries for Bulgaria and Romania.

(15) For Schedule 6 (professional or trade registers), substitute the Schedule set out in the Schedule to these Regulations.

Amendments to the Utilities Contracts Regulations

3.—(1) The Utilities Contracts Regulations are amended as follows.

(2) In regulation 2(1) (interpretation), in the definition of “central purchasing body”, for “a utility which is a contracting authority and”, substitute “a contracting authority”.

(3) In regulation 5(1) (application) for “Subject to regulation 11(20), these Regulations” substitute “These Regulations”.

(4) In regulation 7(4) (exclusion of contracts awarded to affiliated undertakings or joint ventures) for “may” substitute “shall”.

(5) In regulation 11 (thresholds)–

- (a) in paragraph (1) after “These Regulations” insert “, except paragraph (20) of this regulation.”; and
 - (b) in paragraph (20) after “advertising” insert “and follow a procedure leading to the award of the contract”.
- (6) In regulation 34 (design contests)–
- (a) in paragraph (2), for “the relevant threshold described in paragraph (4)” substitute “the amount set out in Article 61(1)”;
 - (b) in paragraph (3)(b), for “the relevant threshold described in paragraph (4)” substitute “the amount set out in Article 61(2).”; and
 - (c) omit paragraph (4).
- (7) In regulation 38(4) (statistical and other reports), for sub-paragraph (b) substitute–
- “(b) telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1 and 64228200-2 within category 5 of Part A of Schedule 3; or”.
- (8) In Schedule 4 (extension to non-member states), in the table, omit the entries for Bulgaria and Romania.

St Andrew’s House,
Edinburgh
26th February 2008

JOHN SWINNEY
A member of the Scottish Executive