
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 88

The Public Contracts (Scotland) Regulations 2012

PART 1

GENERAL

Thresholds

8.—(1) These Regulations, except paragraph (21) of this regulation, do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system, where the estimated value of the contract (net of value added tax) at the relevant time is less than the relevant threshold.

(2) For the purposes of paragraph (1), the relevant threshold is the amount set out in Article 7(c) in the case of a public works contract and a public works contract subsidised as referred to in regulation 34.

(3) Subject to paragraph (4), the relevant threshold for the purposes of paragraph (1) in the case of a Part A public services contract is—

- (a) the amount set out in Article 7(a) where offers are sought by Schedule 1 entities; and
- (b) the amount set out in Article 7(b) where offers are sought by any other contracting authority.

(4) For the purposes of paragraph (1), the relevant threshold is the amount set out in Article 7(b) in the case of a public services contract which is—

- (a) subsidised as referred to in regulation 34;
- (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;
- (c) for research and development services specified in category 8 of Part A of Schedule 3; or
- (d) a Part B services contract.

(5) For the purposes of paragraph (1), the relevant threshold in the case of a public supply contract is—

- (a) the amount set out in Article 7(a) where offers are sought by—
 - (i) Schedule 1 entities; and
 - (ii) the Secretary of State for Defence, but only in relation to a contract for the purchase or hire of goods specified in Schedule 5; and
- (b) the amount set out in Article 7(b) in relation to all other contracts.

(6) The value in pounds sterling of any amount expressed in these Regulations in euro must be calculated by reference to the rate for the time being applying for the purposes of the Public Sector Directive as published from time to time in the Official Journal.

(7) For the purposes of paragraph (1), the estimated value of a public contract is the value of the total consideration payable, net of value added tax (calculated in accordance with this regulation), which the contracting authority expects to be payable under the contract.

(8) In determining the value of the total consideration which the contracting authority expects to be payable under a public contract it must, where appropriate, take account of—

- (a) any form of option;
- (b) any renewal of the contract;
- (c) any prize or payment awarded by the contracting authority to the economic operator;
- (d) the premium payable and other forms of remuneration for insurance services;
- (e) fees, commission, interest or other forms of remuneration payable for banking and other financial services; and
- (f) fees, commission or other forms of remuneration payable for design services.

(9) For the purposes of paragraph (1), the estimated value of a public supply contract for the hire of goods is—

- (a) the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is of fixed duration; or
- (b) the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into.

(10) For the purposes of paragraph (1), the estimated value of a public services contract which does not indicate a total price is—

- (a) the aggregate of the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or
- (b) the value of the consideration which the contracting authority expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period.

(11) Subject to paragraphs (12) and (15), where a contracting authority has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of paragraph (1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.

(12) Paragraph (11) does not apply to any contract (unless the contracting authority chooses to apply that paragraph to a contract) if the contract has an estimated value of less than—

- (a) 80,000 euro for a public services contract or a public supply contract; or
- (b) 1,000,000 euro for a public works contract;

and the aggregate value of that contract and any other such contract is less than 20% of the aggregate value of the consideration which the contracting authority has given or expects to be payable under all the contracts entered into or to be entered into to fulfil the single requirement for goods, services or for the carrying out of work or works.

(13) Subject to paragraph (15), where a contracting authority has a requirement over a period for goods or services and for that purpose enters into—

- (a) a series of contracts, or
- (b) a contract which under its terms is renewable,

the estimated value for the purposes of paragraph (1) of the contract is the amount calculated under paragraph (14).

(14) The contracting authority must calculate the amount referred to in paragraph (13) either—

- (a) by taking the aggregate of the value of the consideration payable under the contracts which—
 - (i) have similar characteristics; and
 - (ii) are for the same type of goods or services,during the last financial year of the contracting authority ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods to be purchased or hired or services to be provided in the period of 12 months commencing with the relevant time; or
- (b) by estimating the aggregate of the value of the consideration which the contracting authority expects to be payable under contracts which have similar characteristics, and which are for the same type of goods or services during—
 - (i) in the case of public supply contracts, the period of 12 months from the first date of the delivery of the goods to be purchased or hired, or in the case of public services contracts, from the first date on which the services will be performed; or
 - (ii) the financial year, where the end of that financial year is later than 12 months after the first date of the delivery of the goods or the first date on which the services will be performed, as the case may be.

(15) Notwithstanding paragraphs (11) and (13), in relation to a public supply contract or a public services contract, when the goods or services are required for the sole purpose of a discrete operational unit within the organisation of a contracting authority and—

- (a) the decision whether to procure those goods or services has been devolved to such a unit; and
- (b) that decision is taken independently of any other part of the contracting authority;

the valuation methods described in paragraphs (11) and (14) must be adapted by aggregating only the value of the consideration which was payable or which the contracting authority expects to be payable, as the case may be, under a public supply contract or a public services contract which was or is required for the sole purpose of that unit.

(16) Where a contracting authority intends to provide any goods to the economic operator awarded a public works contract for the purpose of carrying out that contract, the value of the consideration of the public works contract for the purposes of paragraphs (7) and (11) is taken to include the estimated value at the relevant time of those goods.

(17) The relevant threshold for the purposes of paragraph (1) for a framework agreement or dynamic purchasing system is the threshold for—

- (a) a public works contract, where the framework agreement or dynamic purchasing system relates to the carrying out of work or works;
- (b) a public services contract, where the framework agreement or dynamic purchasing system relates to the provision of services; or
- (c) a public supply contract, where the framework agreement or dynamic purchasing system relates to the purchase or hire of goods.

(18) The estimated value of a framework agreement or dynamic purchasing system is the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement or dynamic purchasing system.

(19) A contracting authority must not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of these Regulations to those contracts.

(20) The relevant time for the purposes of paragraphs (1), (14) and (16) means the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these Regulations.

(21) When a contracting authority proposes to award a public contract which has an estimated value for the purpose of paragraph (1) which is below the relevant threshold, or where a proposed public contract is otherwise exempt from the requirement for prior publication of a contract notice, the contracting authority must, if required by its general EU obligations, for the benefit of any potential economic operator, ensure a degree of advertising and follow a procedure leading to the award of the contract which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency.