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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

**The Utilities Contracts (Scotland) Regulations 2016**

PART 1

GENERAL

CHAPTER 3

MATERIAL SCOPE

*SECTION 1*

*Thresholds*

**[<sup>F1</sup>Estimating value]**

16.—(1) A utility must

[<sup>F2</sup>(a)] calculate [<sup>F3</sup>in accordance with the following paragraphs] the estimated value of a contract by reference to the total amount payable under it (regardless of the form of such payment), [<sup>F4</sup>inclusive of VAT, where appropriate][<sup>F5</sup>; or

(b) if it is not possible to calculate the estimated value of a contract, take its estimated value to be equal to the relevant threshold mentioned in regulation 15]

(2) The total amount payable includes the amount payable as a result of the exercise of any form of option and any renewal of the contract as explicitly set out in the procurement documents.

(3) Where a utility provides for prizes or payments to candidates or tenderers it must take them into account when calculating the estimated value.

(4) Where a utility is comprised of separate operational units the utility—

(a) may calculate the estimated value by reference to each such unit or certain category thereof where that unit or certain category thereof is independently responsible for its procurement; and

(b) must calculate the estimated value by reference to the total for all the operational units which are not so responsible.

(5) A utility must not choose a method to be used to calculate the estimated value of a contract with the intention of excluding the contract from the application of these Regulations.

(6) A utility must not sub-divide a contract with the effect of excluding the contract from the application of these Regulations unless such sub-division is justified by objective reasons.

(7) The estimated value must be the value estimated at the moment at which the procurement is commenced.

(8) In the case of a framework agreement or dynamic purchasing system the estimated value shall be the total estimated value of all of the contracts envisaged pursuant to and for the total term of the agreement or system.

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Utilities Contracts (Scotland) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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(9) In the case of an innovation partnership the estimated value shall be the total estimated value of the research and development activities to take place during all stages of the partnership together with the estimated value of works, supplies or services to be developed and delivered by the partner.

(10) In the case of a works contract the estimated value shall include the total estimated value of any supplies and services that are necessary for executing the works and are to be provided by the utility to the contractor.

(11) In the case of a works or service contract to be awarded in the form of separate lots, the estimated value shall be the total estimated value of all such lots.

(12) In the case of a contract for supplies which may be awarded in the form of separate lots the estimated value shall be the total estimated value of all such lots and these Regulations apply to each lot accordingly where the aggregate value of the lots is equal to or greater than the relevant threshold referred to in regulation 15 (thresholds).

(13) In the case of supply or service contracts which are regular in nature or which are intended to be renewed in a given period, the estimated value shall be calculated by reference to—

- (a) the total actual value of contracts of the same type awarded during the period of 12 months or the financial year preceding the proposed award of a further contract but with adjustment of such value, where possible, to take account of the changes in quantity or value which the utility considers likely to occur during the period of 12 months following the award of the contract; or
- (b) the total estimated value of the successive contracts awarded during the 12 months following the first delivery, or during the financial year.

(14) In the case of a supply contract relating to the leasing, rental, hire or hire purchase of products the estimated value shall be—

- (a) in the case of a fixed term contract for a period of less than or equal to 12 months, the total estimated value of the contract;
- (b) in the case of a fixed term contract for a period of more than 12 months, the total value including the estimated residual value; and
- (c) in the case of a contract without a fixed term or the term of which cannot be defined, the monthly value multiplied by 48.

(15) In the case of a service contract for a service of a kind mentioned herein, the estimated value shall be calculated by reference to—

- (a) for insurance services, the premium payable and any other form of remuneration;
- (b) for banking and other financial services, the fees, commissions payable, interest and any other form of remuneration; and
- (c) for design contracts, the fees, commissions payable and any other form of remuneration.

(16) In the case of a service contract which does not indicate a total price, the estimated value must be calculated by reference to—

- (a) in the case of a contract for a fixed term of less than or equal to 48 months, the total value of the contract for its full term; and
- (b) in the case of a contract for a term of more than 48 months or a contract without a fixed term, the monthly value multiplied by 48.

#### Textual Amendments

- F1** [Reg. 16](#) heading substituted (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), regs. 2, **5(4)(b)** (with [reg. 3](#))

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- F2** Words in [reg. 16\(1\)](#) renumbered as [reg. 16\(1\)\(a\)](#) (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), [regs. 2, 5\(4\)\(a\)\(i\)](#) (with [reg. 3](#))
- F3** Words in [reg. 16\(1\)\(a\)](#) inserted (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), [regs. 2, 5\(4\)\(a\)\(ii\)](#) (with [reg. 3](#))
- F4** Words in [reg. 16\(1\)](#) substituted (1.1.2022) by [The Public Procurement \(Agreement on Government Procurement\) \(Thresholds etc.\) \(Amendment\) \(Scotland\) Regulations 2021 \(S.S.I. 2021/378\)](#), [regs. 1\(2\), 4\(3\)](#) (with [reg. 6](#))
- F5** [Reg. 16\(1\)\(b\)](#) and word inserted (30.5.2023) by [The Public Procurement \(Miscellaneous Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/124\)](#), [regs. 2, 5\(4\)\(a\)\(iii\)](#) (with [reg. 3](#))

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**Commencement Information**

- I1** [Reg. 16](#) in force at 18.4.2016, see [reg. 1\(2\)](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Regulations applied by [2023 c. 54 s. 119\(2\)\(b\)](#)
- Regulations power to amend conferred by [2023 c. 54 s. 115\(3\)\(4\)](#)

**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):

- Pt. 5A inserted by [S.S.I. 2019/112 reg. 5\(61\)](#) (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. 3(2)-(2C) substituted for reg. 3(2) by [S.S.I. 2019/112 reg. 5\(3\)\(b\)](#) (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. 15A inserted by [S.S.I. 2019/112 reg. 5\(7\)](#) (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. 20(1)(d)(i)(aa) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(i\)](#) (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. 20(1)(d)(i)(bb) words substituted by [S.S.I. 2019/112 reg. 5\(11\)\(a\)\(ii\)](#) (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. 38A inserted by [S.S.I. 2019/112 reg. 5\(26\)](#) (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. 41(1) reg. 41 renumbered as reg. 41(1) by [S.S.I. 2019/112 reg. 5\(27\)\(b\)](#) (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. 41(1) words omitted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(i) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(aa) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(ii) omitted by virtue of S.S.I. 2019/114, reg. 2(5)(a)(ii)(bb))
- reg. 41(1) words substituted by [S.S.I. 2019/112 reg. 5\(27\)\(b\)\(iii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 5(27)(b)(iii) substituted by S.S.I. 2019/114, reg. 2(5)(a)(ii)(cc) and then S.S.I. 2019/112 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(a))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(i) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))
- reg. 41(1) words substituted by S.S.I. 2019/112, reg. 5(27)(b)(iii) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(a\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))

- reg. 41(2) inserted by [S.S.I. 2019/112 reg. 5\(27\)\(c\)](#) (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. 50(25)(25A) substituted for reg. 50(25) by [S.S.I. 2019/112 reg. 5\(33\)\(c\)](#) (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. 66(2A) inserted by [S.S.I. 2019/112 reg. 5\(38\)\(b\)](#) (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. 69(5)(6) inserted by [S.S.I. 2019/112 reg. 5\(41\)\(f\)](#) (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. 74(6A)-(6C) inserted by [S.S.I. 2019/112 reg. 5\(44\)\(c\)](#) (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. 100(3)(3A) substituted for reg. 100(3) by [S.S.I. 2019/112 reg. 5\(58\)\(c\)](#) (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. 100(4A) inserted by S.S.I. 2019/112, reg. 5(58)(da) (as substituted) by [S.S.I. 2019/114 reg. 2\(5\)\(c\)\(ii\)](#) (This amendment not applied to [legislation.gov.uk](#). S.S.I. 2019/114 revoked immediately before IP completion day by S.S.I. 2020/468, regs. 1(3), 2(2)(b))