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## STATUTORY INSTRUMENTS

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# 2015 No. 102

## The Public Contracts Regulations 2015

### PART 4

#### MISCELLANEOUS OBLIGATIONS

##### CHAPTER 7

##### ADDITIONAL RULES FOR PART 2 PROCUREMENTS

#### Scope of Chapter 7

**105.**—(1) This Chapter applies to procurements within the scope of Part 2.

(2) But—

- (a) this Chapter does not apply to the procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013 <sup>M1</sup>;
- (b) regulations 106 and 108 do not apply where the contracting authority is a maintained school<sup>F1</sup>, an Academy or a sixth form college corporation].

#### Textual Amendments

**F1** Words in reg. 105(2)(b) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), [Sch. 2 para. 20](#) (with reg. 5)

#### Marginal Citations

**M1** [S.I. 2013/500](#).

#### Publication of information on Contracts Finder where contract notices are used

**106.**—(1) Where a contracting authority [<sup>F2</sup>submits] a contract notice to the [<sup>F3</sup>UK e-notification service] for publication, the contracting authority shall cause information to be published on Contracts Finder within 24 hours of the time when the contracting authority becomes entitled, in accordance with regulation 52(3) and (4), to publish the notice at national level.

(2) The information to be published on Contracts Finder shall include at least the following:—

- (a) the internet address at which the procurement documents are accessible;
- (b) the time by which any interested economic operator must respond if it wishes to be considered;
- (c) how and to whom such an economic operator is to respond; and
- (d) any other requirements for participating in the procurement.

**Status:** Point in time view as at 16/08/2021.

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(3) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to the form and manner in which information is to be published on Contracts Finder.

(4) Paragraph (5) applies if such guidance confirms that, for the time being, arrangements have been put in place by or on behalf of the Cabinet Office under which the information referred to in paragraph (2) will, without further action by contracting authorities, be extracted and published on Contracts Finder following the publication of contract notices [<sup>F4</sup>on the UK e-notification service].

(5) In those circumstances, contracting authorities shall be deemed to have complied with paragraph (1) by virtue of [<sup>F5</sup>submitting] the contract notice to the [<sup>F6</sup>UK e-notification service] for publication in accordance with regulation 51.

#### Textual Amendments

- F2** Word in reg. 106(1) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(61\)\(a\)\(i\)](#) (with Sch. paras. 3-5)
- F3** Words in reg. 106(1) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(61\)\(a\)\(ii\)](#) (with Sch. paras. 3-5)
- F4** Words in reg. 106(4) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(61\)\(b\)](#) (with Sch. paras. 3-5)
- F5** Word in reg. 106(5) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(61\)\(c\)\(i\)](#) (with Sch. paras. 3-5)
- F6** Words in reg. 106(5) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(61\)\(c\)\(ii\)](#) (with Sch. paras. 3-5)

#### Qualitative selection

**107.**—(1) Contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office in relation to the qualitative selection of economic operators.

(2) In this regulation, “qualitative selection” means the processes by which, in accordance with regulations 57 to 65, contracting authorities—

- (a) select economic operators to participate in procurement procedures; and
  - (b) decide whether to exclude economic operators from such participation.
- (3) Such guidance may, in particular, relate to—
- (a) the use of questionnaires for the purposes of qualitative selection, including the avoidance of burdensome, excessive or disproportionate questions;
  - (b) the assessment of information relevant to qualitative assessment.

(4) Where a contracting authority conducts a procurement in a way which represents a reportable deviation from the guidance issued under this regulation, the contracting authority shall send to the Cabinet Office a report explaining the deviation.

(5) For that purpose, something is a reportable deviation only if it falls within criteria laid down for that purpose in guidance issued under this regulation.

#### Publication of information on Contracts Finder about contracts awarded

**108.**—(1) Paragraph (2) applies where a contracting authority—

- (a) [<sup>F7</sup>submits] a contract award notice to the [<sup>F8</sup>UK e-notification service] for publication; or
- (b) awards a contract based on a framework agreement.

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(2) In those circumstances, the contracting authority shall cause at least the following information to be published on Contracts Finder:—

- (a) the name of the contractor;
- (b) the date on which the contract was entered into;
- (c) the value of the contract.

(3) But the contracting authority may withhold information from publication where its release—

- (a) would impede law enforcement or would otherwise be contrary to the public interest,
- (b) would prejudice the legitimate commercial interests of a particular economic operator, whether public or private, or
- (c) might prejudice fair competition between economic operators.

(4) Contracting authorities shall comply with paragraph (2) within a reasonable time.

(5) But where a contracting authority [<sup>F9</sup>submits, or intends to submit], a contract award notice to the [<sup>F10</sup>UK e-notification service] for publication, the contracting authority shall not cause the information to be published on Contracts Finder [<sup>F11</sup>before the notice is published on the UK e-notification service].

(6) In complying with this regulation, contracting authorities shall have regard to any guidance issued by the Minister for the Cabinet Office on—

- (a) the form and manner in which the information is to be published on Contracts Finder; and
- (b) what is a reasonable time (having regard, where relevant, to paragraph (5)) for the purposes of paragraph (4).

(7) Paragraph (8) applies if such guidance confirms that, for the time being, arrangements have been put in place by or on behalf of the Cabinet Office under which the information referred to in paragraph (2) will, without further action by contracting authorities, be extracted and published on Contracts Finder following the publication of contract notices [<sup>F12</sup>on the UK e-notification service].

(8) In those circumstances, contracting authorities shall be deemed to have complied with paragraph (2) by virtue of [<sup>F13</sup>submitting] a contract award notice to the [<sup>F14</sup>UK e-notification service] for publication in accordance with regulation 51.

(9) In this regulation, “contract award notice” means a contract award notice referred to in regulation 50 or 75(3).

#### Textual Amendments

- F7** Word in reg. 108(1)(a) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(a)(i)** (with Sch. paras. 3-5)
- F8** Words in reg. 108(1)(a) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(a)(ii)** (with Sch. paras. 3-5)
- F9** Words in reg. 108(5) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(b)(i)** (with Sch. paras. 3-5)
- F10** Words in reg. 108(5) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(b)(ii)** (with Sch. paras. 3-5)
- F11** Words in reg. 108(5) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(b)(iii)** (with Sch. paras. 3-5)
- F12** Words in reg. 108(7) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(c)** (with Sch. paras. 3-5)
- F13** Word in reg. 108(8) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), **6(62)(d)(i)** (with Sch. paras. 3-5)

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**F14** Words in reg. 108(8) substituted (31.12.2020) by [The Public Procurement \(Amendment etc.\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1319\)](#), regs. 1(2), [6\(62\)\(d\)\(ii\)](#) (with Sch. paras. 3-5)

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