

STATUTORY INSTRUMENTS

2015 No. 102

The Public Contracts Regulations 2015

PART 5

REVOCATIONS, CONSEQUENTIAL AMENDMENTS, SAVINGS AND TRANSITIONAL PROVISIONS

Interpretation of Part 6

115. In this Part, “the 2006 Regulations” means the Public Contracts Regulations 2006 ^{M1}.

Marginal Citations

M1 [S.I. 2006/5](#), amended by [S.I. 2007/3542](#), 2008/2256, 2683, 2848, 2009/1307, 2992, 2010/133, 976, 2011/1043, 1848, 2053, 2581, 3058, 2013/252, 1431, 2014/834 and by the [Enterprise and Regulatory Reform Act 2013 \(c.24\)](#), [Schedule 20](#), paragraph 2.

Revocation and amendments

116. Subject to the other provisions of this Part—

- (a) the 2006 Regulations are revoked; and
- (b) the consequential and miscellaneous amendments set out in Schedule 6 have effect.

General saving in respect of certain concession contracts

117. Nothing in these Regulations affects—

- (a) public works concession contracts within the meaning of the 2006 Regulations, or
- (b) services concession contracts within the meaning of the 2006 Regulations,

or procedures for the award of such contracts.

General transitional provision and saving where procurement procedure commenced before 26th February 2015

118.—(1) Nothing in these Regulations affects any contract award procedure commenced before 26th February 2015.

(2) For that purpose, a contract award procedure has been commenced before 26th February 2015 if, before that date—

- (a) a contract notice has been sent to the Official Journal in accordance with the 2006 Regulations in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed public contract, framework agreement or dynamic purchasing system;

Status: Point in time view as at 01/01/2022.

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- (b) the contracting authority has had published any form of advertisement seeking offers or expressions of interest in a proposed public contract, framework agreement or dynamic purchasing system; or
 - (c) the contracting authority has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed public contract, framework agreement or dynamic purchasing system, or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed public contract, framework agreement or dynamic purchasing system.
- (3) Nothing in these Regulations affects the award of a specific contract based on a framework agreement where the framework agreement was concluded—
- (a) before 26th February 2015; or
 - (b) on or after 26th February 2015 following a contract award procedure which, by virtue of paragraph (1), was not affected by these Regulations.
- (4) Nothing in these Regulations affects the award of a specific contract under a dynamic purchasing system where the system was established—
- (a) before 26th February 2015; or
 - (b) on or after that date following a contract award procedure which, by virtue of paragraph (1), was not affected by these Regulations.
- [^{F1}(5) Paragraphs (5A) to (5D) apply in the case of a contract awarded—
- (a) before 26th February 2015; or
 - (b) after that date but where the award itself was not, by virtue of paragraphs (1) to (4), affected by these Regulations.
- (5A) Except in the case of a contract referred to in paragraph (5B) to the extent referred to in paragraph (5C), nothing in these Regulations affects a contract to which paragraph (5) applies.
- (5B) This paragraph refers to a contract which was awarded under the 2006 Regulations (other than a public works concession contract).
- (5C) A contract referred to in paragraph (5B) is subject to regulations 72 and 73(3) and Chapter 6 of Part 3 (so far as that Chapter applies to regulations 72 and 73(3)).
- (5D) For the purposes of paragraph (5C), any reference in regulation 72 or 73(3) or Chapter 6 of Part 3 to a contract or to a public contract includes a contract to which paragraph (5B) applies.]
- (6) In this regulation, “dynamic purchasing system”, “framework agreement”^{F2}, “public contract” and “public works concession contract”] have the same meanings as in the 2006 Regulations.

Textual Amendments

- F1** Reg. 118(5)-(5D) substituted for reg. 118(5) (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 2 para. 23(2)** (with reg. 5)
- F2** Words in reg. 118(6) substituted (18.4.2016) by The Public Procurement (Amendments, Repeals and Revocations) Regulations 2016 (S.I. 2016/275), reg. 1(1), **Sch. 2 para. 23(3)** (with reg. 5)

Transitional provision and saving where utilities procurement procedure commenced before 26th February 2015

119.—(1) The Utilities amendments do not affect any contract award procedure commenced before 26th February 2015.

(2) For that purpose, a contract award procedure has been commenced before 26th February 2015 if, before that date—

- (a) a contract notice has been sent to the Official Journal in accordance with the UCR in order to invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract or dynamic purchasing system;
- (b) a periodic indicative notice has been sent to the Official Journal, in which case the contract award procedure that is not affected by the Utilities amendments is the procedure for the award of any proposed contract the intention to award which was indicated in the notice, but only if the requirements in regulation 16(3)(a) and (b) of the UCR are satisfied;
- (c) the utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract or dynamic purchasing system; or
- (d) the utility has contacted any economic operator in order to—
 - (i) seek expressions of interest or offers in respect of a proposed contract or dynamic purchasing system, or
 - (ii) respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed contract or dynamic purchasing system.

(3) The Utilities amendments do not affect the award of a specific contract under a framework agreement where the framework agreement was concluded—

- (a) before 26th February 2015; or
- (b) on or after 26th February 2015 following a contract award procedure which, by virtue of paragraph (1), was not affected by the Utilities amendments.

(4) The Utilities amendments do not affect the award of a specific contract under a dynamic purchasing system where the system was established—

- (a) before 26th February 2015; or
- (b) on or after that date following a contract award procedure which, by virtue of paragraph (1), was not affected by the Utilities amendments.

(5) In this regulation—

- (a) “contract”, “dynamic purchasing system”, “economic operator”, “framework agreement” and “periodic indicative notice” have the same meanings as in the UCR;
- (b) “the UCR” means the Utilities Contracts Regulations 2006 ^{M2}; and
- (c) “the Utilities amendments” means the amendments made to the UCR by paragraph 15 of Schedule 7.

Marginal Citations

M2 S.I. 2006/6, amended by S.I. 2008/2848, 2011/1043, 2013/1659, 2013/610; there are other amending instruments but none is relevant.

Temporary exemption and saving for certain NHS procurements

120.—(1) Nothing in these Regulations affects—

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- (a) any contract award procedure that—
 - (i) relates 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 ^{M3}, and
 - (ii) is commenced before 18th April 2016; or
- (b) any contract awarded as a result of such a procedure.

(2) For that purpose, a contract award procedure has been commenced before 18th April 2016 if, before that date, any of the events mentioned in regulation 118(2)(a) to (c) has occurred.

Marginal Citations

M3 [S.I. 2013/500](#).

Transitory provision prior to full commencement of regulation 22(1) to (7)

121.—(1) This regulation applies during the period beginning on the date mentioned in regulation 1(3)(a) and ending immediately before the date mentioned in regulation 1(3)(c).

(2) During that period, contracting authorities may choose between the following means of communication for the purposes mentioned in paragraph (3):—

- (a) electronic means in accordance with regulation 22;
- (b) post or other suitable carrier;
- (c) fax;
- (d) a combination of those means.

(3) That choice is available for all communication and information exchange in respect of which both the following criteria are met:—

- (a) the use of electronic means would, in accordance with regulation 22(1) to (5), have been required if those provisions had been in force;
- (b) the use of electronic means is not required by any other provision of these Regulations that is in force.

Complying with regulation 113 before 1st April 2016

122. In relation to any financial year ending before 1st April 2016, a contracting authority may comply with regulation 113(7) as if sub-paragraph (b) referred to the total amount of interest actually paid instead of the total amount of liability accrued.

Status:

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