

# PART 1

## GENERAL

### Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Public Contracts Regulations 2015.

#### *Commencement*

(2) Except for the provisions mentioned in paragraphs (3) to (6), these Regulations come into force on 26th February 2015.

(3) Paragraphs (1) to (7) of Regulation 22 come into force—

- (a) for the purposes of regulations 27(6), 28(9), 34(13), 36(4), 53(3) and 121(2)(a), on 26th February 2015;
- (b) for the purposes of regulation 37(7), on 18th April 2017;
- (c) for all other purposes, on 18th October 2018.

(4) Regulations 37(7) and 59(7) come into force on 18th April 2017.

(5) Regulation 61 comes into force on 18th October 2018.

(6) Regulations 106, 108, 110 and 112 come into force—

- (a) in relation to contracting authorities which perform their functions on behalf of the Crown, on 26th February 2015;
- (b) in relation to other contracting authorities, on 1st April 2015.

#### *Extent and application*

(7) Except for paragraph 19 of Schedule 6, these Regulations do not extend to Scotland.

(8) Part 4 does not apply to a contracting authority if its functions are wholly or mainly—

- (a) Northern Ireland devolved functions, that is to say functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998(a)); or
- (b) Welsh devolved functions, that is to say functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006(b)).

### Definitions

2.—(1) In these Regulations, except where the context otherwise requires,—

“Academy” means a person who is the proprietor, within the meaning of section 579(1) of the Education Act 1996(c), of an Academy within the meaning of that section;

“accelerated procedure” means any of the following:—

- (a) an open procedure in which the contracting authority has exercised the power conferred by regulation 27(5) to fix a time limit for the receipt of tenders that is shorter than the minimum specified in regulation 27(2);
- (b) a restricted procedure in which the contracting authority has exercised the power conferred by regulation 28(10) to fix a time limit—

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(a) 1998 c.47; section 6 was amended by S.I. 2011/1053, article 6(2)(a); section 7 was amended by the Justice (Northern Ireland) Act 2002 (c.26), section 84(1) and Schedule 13 and by the Northern Ireland (Miscellaneous Provisions) Act 2006 (c.33), Schedule 4, paragraph 10; section 7A was inserted by the Northern Ireland (Miscellaneous Provisions) Act 2014, section 6(1) and (3).

(b) 2006 c.32; section 108 was amended by S.I. 2011/1053, article 6(2)(a).

(c) 1996 c.56; the definition of ‘Academy’ was inserted by the Academies Act 2010 (c.32), Schedule 2, paragraphs 1 and 6. That definition, and the definition of ‘proprietor’, were amended by the Education Act 2011 (c.21), Schedule 13, paragraphs 9(1) and (17).

- (i) for the receipt of requests to participate that is shorter than the minimum specified in regulation 28(2), or
- (ii) for the receipt of tenders that is shorter than the minimum specified in regulation 28(5);
- (c) a competitive procedure with negotiation in which the contracting authority has exercised the power conferred by regulation 29(10) to fix a time limit—
  - (i) for the receipt of requests to participate that is shorter than the minimum specified in regulation 29(4); or
  - (ii) for the receipt of initial tenders that is shorter than the minimum specified in regulation 29(5).

“ancillary purchasing activities” means activities consisting of the provision of support to purchasing activities, in particular in the following forms:—

- (a) technical infrastructure enabling contracting authorities to award public contracts or to conclude framework agreements for works, supplies or services;
- (b) advice on the conduct or design of public procurement procedures;
- (c) preparation and management of procurement procedures on behalf and for the account of the contracting authority concerned;

“bodies governed by public law” means bodies that have all of the following characteristics:—

- (a) they are established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) they have legal personality; and
- (c) they have any of the following characteristics:—
  - (i) they are financed, for the most part, by the State, regional or local authorities, or by other bodies governed by public law;
  - (ii) they are subject to management supervision by those authorities or bodies; or
  - (iii) they have an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law;

“call for competition” means a call for competition made in a manner required or permitted by regulation 26(8) to (9) or, where relevant, one of the notices referred to in regulation 75(1) or a contest notice;

“candidate” means an economic operator that has sought an invitation or has been invited to take part in a restricted procedure, a competitive procedure with negotiation, a negotiated procedure without prior publication, a competitive dialogue or an innovation partnership;

“central government authorities” means the Crown and all the bodies listed in Schedule 1 (whether or not they perform their functions on behalf of the Crown), but does not include Her Majesty in her private capacity;

“central purchasing body” means a contracting authority which provides centralised purchasing activities and which may also provide ancillary purchasing activities;

“centralised purchasing activities” has the meaning given by regulation 37(10);

“the Commission” means the European Commission;

“common technical specification” means a technical specification in the field of information and communication technology laid down in accordance with Articles 13 and 14 of Regulation (EU) No 1025/2012 of the European Parliament and of the Council<sup>(a)</sup> as amended from time to time;

“contest notice” means the notice referred to in regulation 79(1);

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(a) OJ No L 316, 14.11.2012, p12.

“contract notice” means the notice referred to in regulation 49 or, where relevant, 75(1)(a);

“contracting authorities” means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law, and includes central government authorities, but does not include Her Majesty in her private capacity;

“Contracts Finder” means a web-based portal provided for the purposes of Part 4 by or on behalf of the Cabinet Office;

“CPV” means the Common Procurement Vocabulary as adopted by Regulation (EC) No 2195/2002 of the European Parliament and of the Council(a) as amended from time to time;

“Defence and Security Regulations” means the Defence and Security Public Contracts Regulations 2011(b);

“design contests” means those procedures which enable a contracting authority to acquire, mainly in the fields of town and country planning, architecture and engineering or data processing, a plan or design selected by a jury after being put out to competition with or without the award of prizes;

“disabled”, in relation to a person, means a disabled person within the meaning of the Equality Act 2010(c) and, in relation to a worker, means a disabled person who is a worker;

“dynamic purchasing system” means the system referred to in regulation 34;

“economic operator” means any person or public entity or group of such persons and entities, including any temporary association of undertakings, which offers the execution of works or a work, the supply of products or the provision of services on the market;

“electronic means” means electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by any other electromagnetic means;

“ESPD” means the European Single Procurement Document referred to in regulation 59(1);

“EU Publications Office” means the Publications Office of the European Union;

“European standard” means a standard adopted by a European standardisation organisation and made available to the general public;

“European Technical Assessment” means the documented assessment of the performance of a construction product, in relation to its essential characteristics, in accordance with the relevant European Assessment Document as defined in point 12 of Article 2 of Regulation (EU) No 305/2011 of the European Parliament and of the Council(d) as amended from time to time;

“framework agreement” has the meaning given by regulation 33(2);

“GPA” means the Agreement on Government Procurement between certain parties to the World Trade Organisation signed in Marrakesh on 15th April 1994 as amended(e);

“innovation” means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations, including with the purpose of helping to solve societal challenges or to support the Europe 2012 strategy for smart, sustainable and inclusive growth;

“international standard” means a standard adopted by an international standardisation organisation and made available to the general public;

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- (a) OJ No L 340, 16.12.2002, p1, last amended by Commission Regulation (EC) No 213/2008 (OJ No L 74, 15.3.2008, p1).
- (b) S.I. 2011/1848, amended by S.S.I. 2012/88, 2012/89; there are other amending instruments but none is relevant.
- (c) 2010 c.15.
- (d) OJ No L 88, 4.4.2011, p5, last amended by Commission Delegated Regulation (EU) No 574/2014 (OJ No L 159, 28.5.2014, p41).
- (e) All the substantive provisions of the Agreement were substituted by the Protocol which was approved, on behalf of the EU, by Council Decision 2014/115/EU (OJ No L 68, 7.3.2014, p1), to which the text of the Protocol is attached (at OJ No L 68, 7.3.2014, p2). In accordance with Article 3 of the Protocol, the Protocol has entered into force for the EU.

“invitation to confirm interest” means, except in regulation 31(18), an invitation which a contracting authority sends in order to comply with regulation 54(2);

“label” means any document, certificate or attestation confirming that the works, products, services, processes or procedures in question meet certain requirements;

“label requirements” means the requirements to be met by the works, products, services, processes or procedures in order to obtain the label concerned;

“legal person” means a person, whether governed by private law or public law, other than a natural person;

“life cycle” means all stages which are consecutive or interlinked, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation;

“maintained school” means the governing body of a maintained school within the meaning of section 19(1) of the Education Act 2002(a);

“national standard” means a standard adopted by a national standardisation organisation and made available to the general public;

“NHS Trust” means a trust established under section 25 of the National Health Service Act 2006(b);

“Official Journal” means the Official Journal of the European Union;

“prior information notice” means the notice referred to in regulation 48 or, where relevant, regulation 75(1)(b);

“prior publication” means prior publication of a call for competition;

“procurement” means the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose;

“procurement document” means any document produced or referred to by the contracting authority to describe or determine elements of the procurement or the procedure, including the contract notice, the prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents;

“public contracts” means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities and having as their object the execution of works, the supply of products or the provision of services;

“Public Contracts Directive” means Directive 2014/24/EU of the European Parliament and of the Council(c);

“public service contracts” means public contracts which have as their object the provision of services other than those referred to in the definition of “public works contracts”;

“public supply contracts” means public contracts which have as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations;

“public works contracts” means public contracts which have as their object any of the following:—

- (a) the execution, or both the design and execution, of works related to one of the activities listed in Schedule 2;

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(a) 2002 c.32.

(b) 2006 c.41.

(c) OJ No L 94, 28.3.2014, p65.