

Appendix 2 – Changes to Public Contract Regulations

The Public Contract Regulations 2015 supersede the Public Contract Regulations 2006. Their main purpose is to implement the

What does not Change

- No change in the bodies covered by the regulations - “contracting authorities”
- No immediate change to thresholds of application of the directive (but Commission commitment to review by 2019 the economic effects on the internal market as a result of the application of the thresholds which could lead to an increase in the thresholds)
- As now authorities must comply with principles of transparency, non-discrimination, equal treatment and proportionality
- No changes to remedies
- The regulations will continue to provide a transparent process aimed at maximising opportunity for suppliers whilst allowing achievement of value for money by authorities

Key Changes

- Introduction of a new innovation partnership procedure to allow for the development of innovative solutions;
- “Light touch” regime for health, social, legal and other services with a higher threshold and limited procedural requirements;
- Shorter timescales to speed up straightforward award procedures;
- Possibility for sub-central authorities to use a PIN notice as a call for competition;
- Express permission to conduct market consultations;
- Encouragement to divide contracts into lots;
- Prohibition to set minimum annual turnover threshold higher than twice the annual contract value;
- Expanded list of mandatory and discretionary exclusion grounds including poor performance. The extended exclusion grounds are counterbalanced by the introduction of new self-cleaning provisions which allow operators to show that they have implemented remedial measures to demonstrate reliability despite the existence of an exclusion ground;
- Introduction of the European Single Procurement Document to allow operators to self-declare compliance with prequalification requirements in lieu of certificates;
- Award of all public contracts on the basis of MEAT and a new meaning of MEAT which encourages evaluation on the basis of the best quality/price ratio, including life-cycle costs;
- Permission to use experience as an award criterion;
- New rules on modification of contracts which allow for the change of an operator without a new procurement in case of a corporate restructuring or insolvency;
- New record keeping and reporting obligations.

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The Lord Young reforms

Some provisions in the new 2015 Regulations go further than the EU Public Sector Procurement Directive, implementing specific SME-friendly recommendations from Lord Young, the Enterprise Advisor to the Prime Minister (Regulations 105-114). They introduce rules that must be followed by authorities when awarding below threshold contracts but above £25,000. These requirements are summarised below.

Above-threshold contracts

- to publish any contract notice sent to the EU's Publications Office for publication within 24 hours of when the authority is entitled to publish the notice at a national level
- to comply with Cabinet Office guidance on qualitative selection at the pre-qualification stage of the tender process, including avoiding burdensome and disproportionate questions
- to publish certain contract award information on Contracts Finder within a reasonable time (note this obligation extends to the award of call-off contracts under framework agreements).

Below-threshold contracts

- to publish information on the contract opportunity on Contracts Finder within 24 hours of the time it first advertises the opportunity in any other way
- not to include a pre-qualification stage if procuring a contract below €134,000 (central Government contracts) or €207,000 (sub-central Government contracts)
- to publish information on contract award within a reasonable time on Contracts Finder
- a requirement to include in every public contract (whether or not subject to the 2015 Regulations) provisions stipulating that the authority will pay the contractor no later than 30 days from the date on which the invoice is "valid and undisputed" (a concept to be elaborated upon by the Cabinet Office in guidance in due course)
- a requirement to "have regard" to any guidance published by the Cabinet Office in relation to these new requirements