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WELSH STATUTORY INSTRUMENTS

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**2023 No. 506 (W. 76)**

**PUBLIC PROCUREMENT, WALES**

**The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023**

<i>Made</i>	- - - -	3 May 2023
<i>Laid before Senedd Cymru</i>		5 May 2023
<i>Coming into force</i>	- -	26 May 2023

The Welsh Ministers make these Regulations, in exercise of the powers conferred by sections 1(1) and (2), 2(1)(b), (c) and (d) of the Trade (Australia and New Zealand) Act 2023<sup>(1)</sup>.

**Title, commencement, application and interpretation**

1.—(1) These Regulations are called The Public Procurement (International Trade Agreements) (Amendment) (Wales) Regulations 2023.

(2) These Regulations come into force on 26 May 2023.

(3) These Regulations apply in relation to devolved Welsh authorities.

(4) In this Regulation, “devolved Welsh authority” has the meaning given by section 157A of the Government of Wales Act 2006<sup>(2)</sup>.

**Amendment to the Public Contracts Regulations 2015**

2.—(1) The Public Contracts Regulations 2015<sup>(3)</sup> are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

(a) omit the definition of “invitation to confirm interest”;

(b) in the definition of “procurement document”, omit “the prior information notice where it is used as a means of calling for competition.”

(3) In regulation 6 (methods for calculating the estimated value of procurement)—

(a) in paragraph (15A), omit “that is not a devolved Welsh authority”;

(b) in paragraph (20), omit “that is not a devolved Welsh authority”.

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(1) 2023 c. 9.

(2) 2006 c. 32. Section 157A was inserted into the Government of Wales Act 2006 by the Wales Act 2017 (c. 4), section 4(1).

(3) S.I. 2015/102, as amended by S.I. 2020/1319, S.I. 2021/787, S.I. 2022/766 and S.I. 2023/484. There are other amending instruments but none which are relevant.

- (4) In regulation 18 (principles of procurement), in paragraph (4), omit “that are not devolved Welsh authorities”.
- (5) In regulation 22 (rules applicable to communication)—
- (a) in paragraph (14)(a), omit “or from the date when the invitation to confirm interest is sent”;
  - (b) in paragraph (15)(b), omit “or the invitation to confirm interest”.
- (6) In regulation 26 (choice of procedures)—
- (a) in paragraph (8), for “Subject to paragraph (9), the” substitute “The”;
  - (b) omit paragraphs (9) and (10).
- (7) In regulation 27 (open procedure), in paragraph (4), omit “which was not itself used as a means for calling for competition”.
- (8) In regulation 28 (restricted procedure)--
- (a) omit paragraph (2)(b) and the preceding “, or”;
  - (b) in paragraph (6), omit “which was not itself used as a means for calling for competition”.
- (9) In regulation 29 (competitive procedure with negotiation)—
- (a) omit paragraph (4)(b) and the preceding “, or”;
  - (b) in paragraph (6), omit “which was not itself used as a means of calling for competition”;
  - (c) in paragraph (15), omit “or in the invitation to confirm interest”;
  - (d) in paragraph (19), omit “, in the invitation to confirm interest”;
  - (e) in paragraph (20), omit “, the invitation to confirm interest”.
- (10) In regulation 33 (framework agreements), in paragraph (5), omit “or the invitation to confirm interest”.
- (11) In regulation 34 (dynamic purchasing systems)—
- (a) omit paragraph (9)(b) and the preceding “, or”;
  - (b) in paragraph (23), omit “or in the invitation to confirm interest”.
- (12) In regulation 35 (electronic auctions), in paragraph (7), omit “or in the invitation to confirm interest”.
- (13) In regulation 36 (electronic catalogues), in paragraph (5)(a), omit “or in the invitation to confirm interest”.
- (14) In regulation 45 (variants), in paragraph (2), omit “or in the invitation to confirm interest”.
- (15) In regulation 46 (division of contracts into lots), in each of paragraphs (3), (4) and (6), omit “or in the invitation to confirm interest”.
- (16) In regulation 48 (prior information notices), omit paragraphs (5), (6) and (8).
- (17) In regulation 50 (contract award notices), omit paragraph (3).
- (18) In regulation 53 (electronic availability of procurement documents)—
- (a) in paragraph (1), omit “or the date on which an invitation to confirm interest is sent”;
  - (b) in each of paragraphs (2), (3) and (4), omit “or the invitation to confirm interest”.
- (19) In regulation 54 (invitations to candidates)—
- (a) omit paragraph (2);
  - (b) in paragraph (3), for “paragraphs (1) and (2)” substitute “paragraph (1)”;
  - (c) in paragraph (4)(e), omit “in the invitation to confirm interest,”;
  - (d) omit paragraph (6).

(20) In regulation 56 (general principles in awarding contracts etc), in paragraph (1)(a), omit “or the invitation to confirm interest”.

(21) In regulation 58 (selection criteria), in paragraph (19), omit “or in the invitation to confirm interest”.

(22) In regulation 65 (reduction of the number of otherwise qualified candidates to be invited to participate), in paragraph (2), omit “or in the invitation to confirm interest”.

(23) In regulation 75 (publication of notices), omit paragraph (1)(b) and the preceding “; or”.

(24) In regulation 76 (principles of awarding contracts), in paragraph (3), omit “or prior information notice”.

(25) In regulation 110 (publication of contract award opportunities on Contracts Finder), omit paragraph (7).

(26) In Schedule 4A (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For contracting authorities that are not devolved Welsh authorities:”.

### **Amendment to the Concession Contracts Regulations 2016**

3.—(1) The Concession Contracts Regulations 2016(4) are amended as follows.

(2) In regulation 8 (principle of equal treatment, non-discrimination and transparency), in paragraph (5), omit “that are not devolved Welsh authorities”.

(3) In regulation 9 (threshold amounts and methods for calculating the estimated value of concession contracts), in paragraph (9A), omit “that is not a devolved Welsh authority”.

(4) In Schedule 4 (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For contracting authorities and utilities that are not devolved Welsh authorities:”.

### **Amendment to the Utilities Contracts Regulations 2016**

4.—(1) The Utilities Contracts Regulations 2016(5) are amended as follows.

(2) In regulation 2 (definitions), in paragraph (1)—

- (a) omit the definition of “invitation to confirm interest”;
- (b) in the definition of “periodic indicative notice”, omit “, or where relevant, 91(1)(b)”;
- (c) in the definition of “procurement document”, omit “, the periodic indicative notice”.

(3) In regulation 17 (methods for calculating the estimated value of the procurement)—

- (a) in paragraph (15A), omit “that is not a devolved Welsh authority”;
- (b) in paragraph 20, omit “that is not a devolved Welsh authority”.

(4) In regulation 36 (principles of procurement), in paragraph (4), omit “that are not devolved Welsh authorities”.

(5) In regulation 40 (rules applicable to communication)—

- (a) in paragraph (14)(a), omit “or from the date on which the invitation to confirm interest is sent”;
- (b) in paragraph (15)(b), omit “or the invitation to confirm interest”.

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(4) S.I. 2016/273 as amended by S.I. 2019/624, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872, S.I. 2021/1221, S.I. 2022/766 and S.I. 2023/484.

(5) S.I. 2016/274, as amended by S.I. 2016/696, S.I. 2019/624, S.I. 2020/1319, S.I. 2021/573, S.I. 2021/787, S.I. 2021/872, S.I. 2021/1221, S.I. 2022/766 and S.I. 2023/484.

- (6) In regulation 44 (choice of procedures), omit paragraphs (4)(a) and (5).
- (7) In regulation 45 (open procedure)—
  - (a) in paragraph (2), for “paragraphs (4) to (6)”, substitute “paragraphs (4A) to (6)”;
  - (b) omit paragraph (4);
  - (c) in paragraph (4A), omit “that are not devolved Welsh authorities”.
- (8) In regulation 46 (restricted procedure), omit paragraph (2)(b) and the preceding “; or”.
- (9) In regulation 47 (negotiated procedure with prior call for competition), omit paragraph (2)(b) and the preceding “; or”.
- (10) In regulation 48 (competitive dialogue), omit paragraph (2)(b) and the preceding “; or”.
- (11) In regulation 52 (dynamic purchasing systems)—
  - (a) omit paragraph (9)(b) and the preceding “; or”;
  - (b) in paragraph 23—
    - (i) after sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (b).
- (12) In regulation 53 (electronic auctions), in paragraph (7), omit “, in the invitation to confirm interest”.
- (13) In regulation 54 (electronic catalogues), in paragraph (5)(a), omit “, in the invitation to confirm interest”.
- (14) In regulation 63 (communication of technical specifications), omit paragraph (1)(b) and the preceding “; or”.
- (15) In regulation 65 (division of contract into lots)—
  - (a) in paragraph (2)—
    - (i) after sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (b).
  - (b) in both paragraph (3)(b) and paragraph (5)(b), omit “to confirm interest”.
- (16) In regulation 67 (periodic indicative notices), omit paragraphs (5), (6) and (8).
- (17) In regulation 70 (contract award notices), omit paragraph (3).
- (18) In regulation 73 (electronic availability of procurement documents)—
  - (a) in paragraph (1), omit “or the date on which an invitation to confirm interest is sent”;
  - (b) in paragraph (4), omit “or the invitation to confirm interest”;
  - (c) in paragraph (5)—
    - (i) after sub-paragraph (a), insert “or”;
    - (ii) omit sub-paragraph (b).
- (19) In regulation 74 (invitations to candidates)—
  - (a) omit paragraph (2);
  - (b) in paragraph (3), for “paragraphs (1) and (2)” substitute “paragraph (1)”;
  - (c) omit paragraph (6).
- (20) In regulation 91 (publication of notices), in paragraph (1)—
  - (a) after sub paragraph (a), insert “or”;
  - (b) omit sub-paragraph (b).

(21) In regulation 92 (principles of awarding contracts), in paragraph (3), omit “, periodic indicative notice”.

(22) In regulation 105A (duty owed to economic operators from GPA parties), in paragraph (3)—

(a) after sub-paragraph (a), insert “or”;

(b) omit sub-paragraph (b).

(23) In Schedule 3 (international trade agreements), before the entry for the Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and Australia, omit “For utilities that are not devolved Welsh authorities:”.

### **Transitional provisions**

5.—(1) Nothing in these Regulations affects any procurement commenced before these Regulations come into force.

(2) For the purposes of paragraph (1), a procurement is commenced before these Regulations come into force if, before that date, in accordance with the applicable Procurement Regulations—

(a) a notice has been submitted to the UK e-notification service in order to—

(i) invite offers or requests to be selected to tender for or to negotiate in respect of a proposed contract, framework agreement or dynamic purchasing system, or

(ii) publicise an intention to hold a design contest;

(b) the contracting authority or utility has had published any form of advertisement seeking offers or expressions of interest in a proposed contract, framework agreement or dynamic purchasing system;

(c) the contracting authority or utility has contacted any economic operator in order to—

(i) seek expressions of interest or offers in respect of a proposed 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 contract, framework agreement or dynamic purchasing system.

(3) For the purposes of this Regulation, a procurement covers the whole of the procedures which, in accordance with the applicable Procurement Regulations, stem from that commencement.

(4) Procedures taken for the purpose of modifying a contract or framework agreement are not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of the procurement from which the award of that contract or framework agreement had itself stemmed.

(5) A procedure commenced as described in paragraph (2)(a)(i), (b) or (c) is not to be regarded, for the purposes of paragraph (3), as stemming from the commencement of any design contest that had previously been held in relation to the subject-matter of the procurement.

(6) In this Regulation—

(a) “Procurement Regulations” means the following and, in relation to any procedure, means whichever of the following applies to that procedure—

(i) The Public Contracts Regulations 2015;

(ii) The Concession Contracts Regulations 2016;

(iii) The Utilities Contracts Regulations 2016;

(b) the following have the same meaning as in the applicable Procurement Regulations—

(i) contracting authority;

(ii) design contest;

- (iii) dynamic purchasing system;
- (iv) economic operator;
- (v) framework agreement;
- (vi) procurement;
- (vii) UK e-notification service;
- (viii) utility.

3 May 2023

*Rebecca Evans*  
Minister for Finance and Local Government, one  
of the Welsh Ministers

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to various United Kingdom public procurement regulations for the purpose of implementing two Free Trade Agreements entered into by the United Kingdom, one with Australia (the “UK-Australia FTA”) and the other with New Zealand (the “UK-New Zealand FTA”).

The amendments made by these Regulations implement the UK-Australia FTA and the UK-New Zealand FTA, as well as making three sets of amendments of general application under section 1(2) of the Trade (Australia and New Zealand) Act 2023 (c. 9). These amendments of general application are required to ensure compliance with commitments made in the UK-Australia FTA.

The first set of amendments of general application introduce the rule that, where the value of a procurement cannot be estimated, the procurement is to be treated as having been valued at the relevant threshold for that type of procurement. These amendments are made to the Public Contracts Regulations 2015 (S.I. 2015/102) by regulation 2(3)(b), to the Concession Contracts Regulations 2016 (S.I. 2016/273) by regulation 3(3), and to the Utilities Contracts Regulations 2016 (S.I. 2016/274) by regulation 4(3)(b).

In the case of the Public Contracts Regulations 2015 and the Utilities Contracts Regulations 2016, special provision is made for the situation in which the value of one or more lots cannot be estimated. Regulation 2(3)(a) makes the relevant amendment to the Public Contracts Regulations 2015 and regulation 4(3)(a) makes the relevant amendment to the Utilities Contracts Regulations 2016.

The second set of amendments of general application remove the possibility of using a prior information notice and a periodic indicative notice, respectively, as the call for competition. These amendments are made to the Public Contracts Regulations 2015 by regulation 2(2) and 2(5) to 2(25) and to the Utilities Contracts Regulations 2016 by regulation 4(2) and 4(5) to 4(22).

The third set of amendments of general application prohibit contracting authorities and utilities from terminating contracts in a manner that circumvents obligations in the UK-Australia FTA. These amendments are made to the Public Contracts Regulations 2015 by regulation 2(4), to the Concession Contracts Regulations 2016 by regulation 3(2), and to the Utilities Contracts Regulations 2016 by regulation 4(4).

Regulation 5 of these Regulations makes provision for transitional arrangements, in exercise of the power conferred by section 2(1)(d) of the Trade (Australia and New Zealand) Act 2023.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.