

Procurement Directives transposed into Irish law

On 5 May 2016 the [European Union \(Award of Public Authority Contracts\) Regulations 2016](#) and the [European Union \(Award of Contracts by Utility Undertakings\) Regulations 2016](#) were published.

These Regulations transpose [Directive 2014/24/EU on public procurement](#) (the Public Procurement Directive) and [Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors into Irish law](#) (the Utilities Directive), respectively. Both the Public Procurement Directive and the Utilities Directive are part of the broader package of reform of the public procurement rules in the EU. The third directive, Directive 2014/23 on the Award of Concession Contracts, is the final part of that reform package and as of 9 May has not yet been transposed into Irish law.

Both the Public Contract Regulations and the Utilities Regulations are deemed to come into operation on 18 April 2016. This means that all procurement competitions going forward will have to comply with these new Regulations.

Some key points

- The Regulations largely follow the copy out approach and the wording used is very similar to the directives.
- Where discretion was granted to member states under the directives, this discretion was largely passed on to contracting authorities under the Regulations. For example Regulation 71 of the Public Authority Contracts Regulations provides that a contracting authority may ask a tenderer to indicate in its tender any share of the contract that it may intend to subcontract.
- The Regulations contain a number of additional defined terms. For example terms such as “corruption”, “disability” and “label” are all given prescribed meanings under the Irish Regulations.
- As expected, and similar to the approach taken by the UK, the division of contracts into lots was not made mandatory.
- The new Regulations revoke the European Communities (Award of Public Authorities’ Contracts) Regulations 2006 (the 2006 Regulations) however no amendments were made to the Remedies Regulations (S.I. No. 130/2010 - European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010). This is curious as the Remedies Regulations apply to “reviewable public contracts” which are defined as contracts to which the 2006 Regulations apply.

Transitional Arrangements

Contract award procedures which commenced prior to 18 April 2016 are not subject to the new Regulations. Contract award procedures are considered to have been “commenced” when a contracting authority has done any of the following:

- a) Sent a notice to the Publications Office in order to invite tenders or requests to be selected to tender, or to negotiate in respect of, a proposed public contract or framework agreement;
- b) Published any form of advertisement seeking offers or expressions of interest in a proposed public contract or framework agreement;
- c) Contacted any economic operator in order to –
 - (i) Seek expressions of interest or offers in respect of a proposed public contract or framework agreement, or
 - (ii) Respond to an unsolicited expression of interest or offer received from that economic operator in relation to a proposed public contract or framework agreement, or ;
- d) Sent a notice to the Official Journal in accordance with the Regulations of 2006 in order to publicise its intention to hold a design contest.

Framework agreements concluded post 18 April 2016 and contracts awarded on foot of such framework agreements are also excluded from the new Regulations as long as the contract award procedure to which they relate commenced prior to 18 April 2016 in the manner set out above.

The one exception to these transitional arrangements is Regulation 72 on modification of contracts during their term. All contracts, even those awarded on foot of contract award procedures which are outside the scope of the 2016 Regulations, are subject to the rules in Regulation 72.

Template Documents

The OGP have published a new suite of [template procurement documents](#) to reflect the new Regulations.

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