

Scottish Procurement Policy Note:

SPPN 2/2024

Public procurement – legislative and system changes

Purpose

This policy note provides notice of changes to Scottish procurement legislation reflecting updates to various International Trade Agreements (ITA) and to fulfil international obligations. It also provides notice of minor changes to Public Contracts Scotland (PCS) as a result of the UK's accession to the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) trade agreement.

SPPN status

This SPPN is not to be construed as legal advice or a substitute for such advice and should not be read as such. Public bodies should seek their own legal advice in relation to any questions and issues they may have.

Key points

Amendments to six existing International Trade Agreements

Amendments made to the United Kingdom's ITAs with Georgia, the Republic of Kosovo, Ukraine, the Republic of North Macedonia, the Republic of Moldova and the Republic of Albania remove the right to equal treatment from bidders from those countries in relation to the procurement of certain health care services. The services removed from the ITAs are:

- human health services
- administrative healthcare services

- supply services of nursing personnel and supply services of medical personnel

Bidders from these countries will not be able to rely on the remedies provisions in procurement legislation.

Procurement procedure rule changes as a result of CPTPP

- The UK's membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) necessitated some minor procedural amendments to the rules governing the award of contracts subject to those agreements.
- These changes are implemented by way of amendments to the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016.
- These changes are made by the Trade (Comprehensive and Progressive Agreement for Trans-Pacific Partnership) Act 2024, and take effect from the date of entry into force of the CPTPP for the United Kingdom. This is 15 December 2024.

Contracts awarded under international rules

One of the changes concerns contracts awarded under international rules. At present, the domestic regulations exclude from their scope procurements:

- that the contracting authority is obliged to award under procedures established by an international agreement or an international organisation
- that the contracting authority undertakes in accordance with procurement rules provided by an international organisation where the contract is fully financed or co-financed for the main part by that organisation; an
- procurements involving defence or security aspects awarded under international rules.

From the 15 December 2024, these exclusion provisions will be amended to remove the possibility of a contract being awarded in accordance with the rules of a non-majority funding international organisation instead of domestic procurement rules.

Additionally, when a contract is awarded under the procurement rules of a funding international organisation or donor, and where those rules do not restrict the participation of suppliers, the general duty of equal treatment applies. This applies to the competition (despite the domestic regulations not otherwise applying).

Contract award notices

Public bodies currently have the option to list in a contract award notice the value of the highest and lowest tenders received instead of the actual contract value. To comply with the terms of the CPTPP, this option will be withdrawn from PCS in relation to higher value regulated procurements and from 15 December 2024 public bodies will have to list the actual contract value.

Please note that the forms on PCS will be available in this new format from February 2025. Please ensure only the actual contract value is inputted from 15 December 2024 to comply with the terms of the CPTPP.

To ensure consistency and to prevent confusion, the Procurement (Scotland) Regulations 2016 will also be amended from 10 January 2025 to remove this option in relation to the award of lower value contracts which are subject to the Procurement Reform (Scotland) Act 2014.

Other procurement procedure rule changes

To comply with the terms of the UK's international trade agreement with Australia, the option for sub-central contracting authorities to use a Prior Information Notice as a call for competition in some circumstances was withdrawn in 2023.

To ensure consistency and to prevent confusion, the Procurement (Scotland) Regulations 2016 will also be amended from 10 January 2025 to remove this option in relation to the award of lower value contracts which are subject to the Procurement Reform (Scotland) Act 2014.

CPTPP coverage - PCS

Public bodies should note if their tender is covered by CPTPP in the contract notice from 15 December 2024. This should be included under VI.3 Additional information as either 'Covered by CPTPP' or left blank.

A public body can determine whether the procurement is covered by the agreement by reviewing [Annex 15-A, Schedule of the United Kingdom](#). The Annex sets out which entities, goods and services categories it applies to. It also includes the thresholds from which it applies.

Action required and dissemination

Public bodies are asked to note these changes and to bring this policy note to the attention of all relevant staff, including those agencies, non-departmental public bodies and other sponsored public bodies within your area of responsibility.

Contact

Enquiries about this SPPN should be addressed to scottishprocurement@gov.scot