

Public Contracts Regulations 2015/102

reg. 72 Modification of contracts during their term



Law In Force

Version 3 of 3

31 December 2020 - Present

Subjects

Public procurement

72.— Modification of contracts during their term

(1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:—

(a) where the modifications, irrespective of their monetary value, have been provided for in the initial procurement documents in clear, precise and unequivocal review clauses, which may include price revision clauses or options, provided that such clauses—

(i) state the scope and nature of possible modifications or options as well as the conditions under which they may be used, and

(ii) do not provide for modifications or options that would alter the overall nature of the contract or the framework agreement;

(b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—

(i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, [and]¹

(ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority,

provided that any increase in price does not exceed 50% of the value of the original contract;

(c) where all of the following conditions are fulfilled:—

(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;

(ii) the modification does not alter the overall nature of the contract;

(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.

(d) where a new contractor replaces the one to which the contracting authority had initially awarded the contract as a consequence of—

(i) an unequivocal review clause or option in conformity with sub-paragraph (a), or

(ii) universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established, provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Part;

- (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8); or
- (f) where paragraph (5) applies.

(2) Where several successive modifications are made:—

- (a) the limitations imposed by the proviso at the end of paragraph (1)(b) and by paragraph (c)(iii) shall apply to the value of each modification; and
- (b) such successive modifications shall not be aimed at circumventing this Part.

(3) Contracting authorities which have modified a contract in either of the cases described in paragraph (1)(b) and (c) shall [submit]² a notice to that effect, in accordance with [regulation 51](#), for publication.

(4) Such a notice shall contain the information set out in part G of Annex 5 to the Public Contracts Directive [, but as if—]³[

- (a) paragraph 9 (financing by EU funds) were omitted;
- (b) in paragraph 11, "in the Official Journal of the European Union" read "on the UK e-notification service (within the meaning of the Public Contracts Regulations 2015)"; and
- (c) in paragraph 12, "*date of dispatch*" were a reference to the date on which the notice is submitted to the UK e-notification service for the purposes of these Regulations.

]⁴

(5) This paragraph applies where the value of the modification is below both of the following values:—

- (a) the relevant threshold mentioned in [regulation 5](#), and
- (b) 10% of the initial contract value for service and supply contracts and 15% of the initial contract value for works contracts,

provided that the modification does not alter the overall nature of the contract or framework agreement.

(6) For the purposes of paragraph (5), where several successive modifications are made, the value shall be the net cumulative value of the successive modifications.

(7) For the purpose of the calculation of—

- (a) the price mentioned in paragraph (1)(b) and (c), and
- (b) the values mentioned in paragraph (5)(b),

the updated figure shall be the reference figure when the contract includes an indexation clause.

(8) A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

- (a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
- (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—
 - (i) allowed for the admission of other candidates than those initially selected,
 - (ii) allowed for the acceptance of a tender other than that originally accepted, or

- (iii) attracted additional participants in the procurement procedure;
 - (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
 - (d) the modification extends the scope of the contract or framework agreement considerably;
 - (e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).
- (9) A new procurement procedure in accordance with this Part shall be required for modifications of the provisions of a public contract or a framework agreement during its term other than those provided for in this regulation.

Notes

- 1 Word substituted by Public Procurement (Amendments, Repeals and Revocations) Regulations 2016/275 [Sch.2\(1\) para.16](#) (April 18, 2016: substitution has effect subject to transitional provisions specified in SI 2016/275 reg.5)
- 2 Word substituted by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 [Pt 3\(1\) reg.6\(48\)\(a\)](#) (December 31, 2020: substitution has effect subject to saving specified in SI 2020/1319 Sch.1 paras 3, 4 and 10-15)
- 3 Words and reg.72(4)(a)-(c) inserted by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 [Pt 3\(1\) reg.6\(48\)\(b\)](#) (December 31, 2020: insertion has effect subject to saving specified in SI 2020/1319 Sch.1 paras 3, 4 and 10-15)
- 4 Words and reg.72(4)(a)-(c) inserted by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 [Pt 3\(1\) reg.6\(48\)\(b\)](#) (December 31, 2020: insertion has effect subject to saving specified in SI 2020/1319 Sch.1 paras 3, 4 and 10-15)

Part 2 RULES IMPLEMENTING THE PUBLIC CONTRACTS DIRECTIVE > Part 2 RULES ON PUBLIC CONTRACTS > SECTION 6: Contract Performance > reg. 72 Modification of contracts during their term

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reg. 73 Termination of contracts



Law In Force

Version 2 of 2

31 December 2020 - Present

Subjects

Public procurement

73.— Termination of contracts

(1) Contracting authorities shall ensure that every public contract which they award contains provisions enabling the contracting authority to terminate the contract where—

(a) the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with [regulation 72\(9\)](#);[or]¹

(b) the contractor has, at the time of contract award, been in one of the situations referred to in [regulation 57\(1\)](#), including as a result of the application of [regulation 57\(2\)](#), and should therefore have been excluded from the procurement procedure [.]²

[...]³

(2) Those provisions may address the basis on which the power is to be exercisable in those circumstances, for example by providing for notice of termination to be given and by addressing consequential matters that will or might arise from the termination.

(3) To the extent that a public contract does not contain provisions enabling the contracting authority to terminate the contract on any of the grounds mentioned in paragraph (1), a power for the contracting authority to do so on giving reasonable notice to the contractor shall be an implied term of that contract.

Notes

- 1 Word inserted by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 Pt 3(1) [reg.6\(49\)\(a\)](#) (December 31, 2020: insertion has effect subject to saving specified in SI 2020/1319 Sch.1 paras 3, 4 and 10-15)
- 2 Word revoked by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 Pt 3(1) [reg.6\(49\)\(b\)](#) (December 31, 2020: revocation has effect subject to saving specified in SI 2020/1319 Sch.1 paras 3, 4 and 10-15)
- 3 Revoked by Public Procurement (Amendment etc.) (EU Exit) Regulations 2020/1319 Pt 3(1) [reg.6\(49\)\(c\)](#) (December 31, 2020: revocation has effect subject to saving specified in SI 2020/1319 Sch.1 para.7)

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