

The Public Contracts Regulations 2015

Relevance and applicability to JCT Contracts

Many publicly procured projects are built on JCT contracts, and it is important that public sector clients feel confident in using JCT contracts and that they are fully compliant with any relevant regulations. For the 2016 Edition we have taken this into account not only with the incorporation of provisions from the JCT Public Sector Supplement 2011, but also in amending the contracts to take care of some of the specific aspects of the Public Contracts Regulations 2015 ('PC Regulations') that are relevant.

The PC Regulations apply where the employer is a 'contracting authority' and awards a 'public contract' in accordance with the definitions set out in the regulations. Generally, the regulations apply when the contract is within the scope of the PC Regulations and exceeds a value threshold. We recommend that professional advice should be taken if there is any doubt as to the applicability of the Regulations generally or a specific provision.

Whilst many of the PC Regulations' provisions relate solely to procurement, it is important that, where applicable, JCT contracts correctly comply. For the 2016 Edition, the provisions included in respect of the PC Regulations only apply where the Employer is a Local or Public Authority and the Contract is subject to the PC Regulations.

What are the specific provisions included?

Regulation 113 (Prompt payment)

Regulation 113 of the PC Regulations requires that Employers pay valid and undisputed invoices within a 30-day period. There is also a requirement to ensure that invoices are considered and verified in a timely fashion. In addition, there is an obligation on contracting authorities to ensure that sub-contractors abide by the conditions, and that the terms are passed down the supply chain. Where a public contract doesn't provide for these requirements, they are deemed to be included, so that the obligations cannot be contracted out of.

JCT's payment provisions, if they are unamended, already allow for a 30-day period to apply to the payment process, so there are no specific provisions referring to the PC Regulations in this respect. There are however provisions at each tier that refer to Regulation 113 and require that the payment terms are passed down the supply chain.

Regulation 71 (Sub-contracting)

Under Regulation 71 of the PC Regulations, there are provisions that require the Contractor to provide to the Employer basic information on the Contractor's immediate sub-contractors, which may be extended to lower tiers of sub-contractors. These requirements are included in all tiers of JCT contracts. Also under Regulation 71 the Employer has the right to insist on the removal of a sub-contractor where there are grounds for exclusion of that sub-contractor under Regulation 57. The 2016 Edition includes specific provisions at main contract and sub-contract level to reflect these rights.

Regulation 73 (Termination)

Regulation 73 requires public contracts to contain the right for the Employer to terminate the contract where:

- there has been a substantial modification to the contract which would have required a new procurement procedure within the meaning of Regulation 72.
- at the time of contract award one of the mandatory grounds for exclusion applied and the Contractor should have been excluded from the procurement procedure.
- the contract should not have been awarded to the Contractor due to a serious infringement of the obligations under the Treaties and the Public Contracts Directive as declared by the ECJ.

The 2016 Edition includes provisions to give the Employer the right to terminate the contract under each of these circumstances, and includes appropriate provisions to deal with the consequences of termination in each of these scenarios.

It will be appreciated that as the PC Regulations bed down they may be the subject of future guidance from the government and matters as to their interpretation addressed in litigation and other proceedings. These are matters which the JCT monitors, and updates to the above information will be provided as and when appropriate.