

---

STATUTORY INSTRUMENTS

---

**1991 No. 2679**

**PUBLIC PROCUREMENT**

**The Public Supply Contracts Regulations 1991**

<i>Made</i>	- - - -	<i>28th November 1991</i>
<i>Laid before Parliament</i>		<i>29th November 1991</i>
<i>Coming into force</i>	- -	<i>21st December 1991</i>

The Treasury, being the Minister designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to public procurement, in exercise of the powers conferred upon them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

**PART I**  
**GENERAL**

**Title and commencement**

1. These Regulations may be cited as the Public Supply Contracts Regulations 1991 and shall come into force on 21st December 1991.

**Interpretation**

2. —

(1) In these Regulations—

“to award” means to accept an offer made in relation to a proposed contract;

“the Commission” means the Commission of the Communities;

“contract documents” means the invitation to tender for or negotiate the contract, the proposed conditions of contract, the specifications or description of the goods required by the contracting authority, and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with regulation 11(2), 12(2) or 13(2);

---

<sup>(1)</sup> S.I.1991/755.

<sup>(2)</sup> 1972 c. 68.

“contracting authority” has the meaning ascribed to it by regulation 3;

“ECU” means the European Currency Unit as defined in Council Regulation (EEC) No. 3180/78(3);

“established” means the same as it does for the purposes of the Community Treaties;

“financial year” means the period of 12 months ending on 31st March in any year or, in relation to any person whose accounts are prepared in respect of a different 12 month period, that period of 12 months;

“a GATT contracting authority” means one of the entities specified in Schedule 1, being entities in respect of which special provision is made by these Regulations in pursuance of the obligations of the Economic Community under the Agreement on Government Procurement between certain parties to the General Agreement on Tariffs and Trade (GATT) signed in Geneva on 12 April 1979(4);

“goods” includes substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under the supply contract and any ship, aircraft or vehicle;

“government department” includes a Northern Ireland department or the head of such department;

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury;

“national of a member State” means, in the case of a person who is not an individual, a person formed in accordance with the laws of a member State and which has its registered office, central administration or principal place of business in a member State;

“negotiated procedure” means a procedure leading to the award of a public supply contract whereby a contracting authority negotiates the terms of the contract with one or more persons selected by it;

“Official Journal” means the Official Journal of the Communities;

“open procedure” means a procedure leading to the award of a public supply contract whereby all interested persons may tender for the contract;

“public supply contract” means a contract in writing for consideration (whatever the nature of the consideration)–

(a) for the purchase of goods by a contracting authority (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event), or

(b) for the hire of goods by a contracting authority (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not),

and for any siting or installation of those goods, but where under such a contract services are also to be provided, the contract shall only be a public supply contract–

(i) where the value of the consideration attributable to the goods and any siting or installation of the goods is equal to or greater than the value attributable to the services, or

(ii) where the value of the consideration attributable to the services is greater than the value attributable to the goods and of any siting or installation of the goods if the goods could have been provided separately from the services;

“restricted procedure” means a procedure leading to the award of a public supply contract whereby only persons selected by the contracting authority may submit tenders for the contract;

---

(3) OJ No. L379, 30.12.78, p.1, as amended by Council Regulation (EEC) No. 2626/84 (OJ No. L247, 16.9.84, p.1).

(4) Cmnd. 7662.

“ship” includes any boat and other description of a vessel used in navigation;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour;

“supplier” has the meaning ascribed to it by regulation 4;

“working day” means a day other than a Saturday, Sunday or Bank Holiday (within the meaning of the Banking and Financial Dealings Act 1971<sup>(5)</sup>); and

“year” means a calendar year.

(2) The value in the currency of any member State of any amount expressed in these Regulations in ECU or of the amount in ECU for the purposes of regulation 7(2) shall be calculated by reference to the exchange rate for the time being applying for the purposes of Council Directive 77/62/EEC<sup>(6)</sup> as published from time to time in the Official Journal<sup>(7)</sup>.

(3) Where a thing is required to be done under these Regulations—

- (a) within a period after an action is taken, the day on which that action was taken shall not be counted in the calculation of that period;
- (b) within a certain period, that period must include two working days;
- (c) within a period and the last day of that period is not a working day, the period shall be extended to include the following working day.

(4) References in these Regulations to a regulation are references to a regulation in these Regulations and references to a Schedule are references to a Schedule to these Regulations.

## **Contracting Authorities**

### **3. –**

(1) For the purposes of these Regulations each of the following is a “contracting authority”—

- (a) a Minister of the Crown,
- (b) a government department,
- (c) the House of Commons,
- (d) the House of Lords,
- (e) the Northern Ireland Assembly,
- (f) a local authority,
- (g) a fire authority constituted by a combination scheme under the Fire Services Act 1947<sup>(8)</sup>,
- (h) the Fire Authority for Northern Ireland,
- (i) a police authority constituted under section 2 of the Police Act 1964<sup>(9)</sup> or a combined police authority established by an amalgamation scheme under that Act,
- (j) the Police Authority for Northern Ireland,
- (k) an authority established under section 10 of the Local Government Act 1985<sup>(10)</sup>,
- (l) a joint authority established by Part IV of that Act,

---

<sup>(5)</sup> 1971 c. 80.

<sup>(6)</sup> OJ No. L13, 15.1.77, p.1, as amended by Council Directives 80/767/EEC (OJ No. L215, 18.8.80, p.1) and 88/295/EEC (OJ No. L127, 20.5.88, p.1).

<sup>(7)</sup> The rates are determined for each successive period of two years by calculating the average of the daily exchange rates between each currency and the ECU over a period of 24 months preceding the determination. The exchange rates applying at the time of coming into force of these Regulations are published in OJ No. C18, 25.1.90, p.3.

<sup>(8)</sup> 1947 c. 41.

<sup>(9)</sup> 1964 c. 48.

<sup>(10)</sup> 1985 c. 51.

- (m) any body established pursuant to an order under section 67 of that Act,
  - (n) the Broads Authority,
  - (o) any joint board the constituent members of which consist of any of the bodies specified in paragraphs (f), (g), (i), (k), (l), (m) and (n), above,
  - (p) a joint or special planning board constituted for a National Park by an order under paragraphs 1 or 3 of Schedule 17 to the Local Government Act 1972<sup>(11)</sup>,
  - (q) a joint education board constituted under the provisions of Part I of the first Schedule to the Education Act 1944<sup>(12)</sup>,
  - (r) a corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest through the national health service or with respect to education or urban development, not having an industrial or commercial character, and
    - (i) financed wholly or mainly by another contracting authority, or
    - (ii) subject to management supervision by another contracting authority, or
    - (iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, being appointed by another contracting authority,
  - (s) associations of or formed by one or more of the above, and
  - (t) to the extent not specified in sub-paragraphs (a) to (q) above, a GATT contracting authority.
- (2) In the application of these Regulations to England and Wales, “local authority” in paragraph (1) above means—
- (a) a county council, a district council, a London borough council, a parish council, a community council or the Council of the Isles of Scilly;
  - (b) the Common Council of the City of London in its capacity as local authority or police authority.
- (3) In the application of these Regulations to Scotland, “local authority” in paragraph (1) above means a regional, islands or district council or any joint board or joint committee within the meaning of section 235 of the Local Government (Scotland) Act 1973<sup>(13)</sup>.
- (4) In the application of these Regulations to Northern Ireland, “local authority” in paragraph (1) above means a district council within the meaning of the Local Government Act (Northern Ireland) 1972<sup>(14)</sup>.
- (5) Where an entity specified in paragraph (1) above does not have the capacity to enter into a contract, the contracting authority in relation to that entity is a person whose function it is to enter into contracts for that entity.

## Suppliers

### 4. —

- (1) For the purposes of these Regulations a “supplier” means a person—
- (a) who sought, or who seeks, or who would have wished, to be the person to whom a public supply contract is awarded, and
  - (b) who is a national of and established in a member State.

---

<sup>(11)</sup> 1972 c. 70.

<sup>(12)</sup> 1944 c. 31.

<sup>(13)</sup> 1973 c. 65.

<sup>(14)</sup> 1972 c. 9 (N.I.).

(2) Where these Regulations apply a contracting authority shall not treat a person who is not a national of and established in a member State more favourably than one who is.

### **Application of the Regulations**

5. These Regulations apply whenever a contracting authority seeks offers in relation to a proposed public supply contract other than a public supply contract excluded from the application of these Regulations by regulations 6 and 7.

### **General exclusions**

6. These Regulations shall not apply to the seeking of offers in relation to a proposed public supply contract—

- (a) by a contracting authority which is, or which in seeking the offers is exercising the functions of, a carrier by land, air, sea or inland waterway;
- (b) which concerns the production, transport or distribution of drinking water;
- (c) by a contracting authority whose principal activity is the production or distribution of energy or the provision of telecommunications services;
- (d) which is classified as secret or where the delivery of the goods under it must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the basic interests of the security of the United Kingdom require it;
- (e) where goods to be purchased or hired under the contract are goods to which the provisions of Article 223.1(b) of the EEC Treaty apply; or
- (f) where different procedures govern the procedures leading to the award of the contract and it is to be entered into—
  - (i) pursuant to an international agreement to which the United Kingdom and a State which is not a member State are parties and it relates to goods intended for the joint implementation or exploitation of a project pursuant to that agreement;
  - (ii) pursuant to an international agreement relating to the stationing of troops; or
  - (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members.

### **Thresholds**

7. —

(1) These Regulations shall not apply to the seeking of offers in relation to a proposed public supply contract where the estimated value of the contract (net of value added tax) at the relevant time is less than the relevant threshold.

(2) The relevant threshold for the purposes of paragraph (1) above—

- (a) in relation to a public supply contract in relation to which offers are sought by a GATT contracting authority, but in the case of such a contract in relation to which offers are sought by the Secretary of State for Defence only if it is for the purchase or hire of the goods specified in Schedule 2, is the amount for the time being to be treated as the ECU equivalent of 130,000 special drawing rights for the purposes of Council Directive [77/62/EEC](#) as published from time to time in the Official Journal(15);

---

(15) The amount is determined for each successive period of 2 years commencing on 1st January 1988 by calculating the average of the daily exchange rate between the ECU and the special drawing right over a period of 24 months preceding the

(b) in relation to all other public supply contracts, is 200,000 ECU.

(3) Subject to paragraphs (4), (5), (6) and (7) below, the estimated value for the purposes of paragraph (1) above of a public supply contract shall be the value of the consideration which the contracting authority expects to give under the contract.

(4) The estimated value for the purposes of paragraph (1) above of a public supply contract for the hire of goods for an indefinite period, or for a period which is uncertain at the time the contract is entered into, shall be the value of the consideration which the contracting authority expects to give in respect of each month of the hire multiplied by 48.

(5) Where a contracting authority proposes to enter into two or more public supply contracts at the same time in order to purchase or hire goods of a particular type, the estimated value for the purposes of paragraph (1) above of each of those contracts shall be the aggregate of the value of the consideration which the contracting authority expects to give under each of those contracts.

(6) Where a contracting authority has a recurrent need to purchase or hire goods of the type to be purchased or hired under the contract and for that purpose enters into separate public supply contracts at different times or into a public supply contract which under its terms is renewable or into a public supply contract for the purchase or hire of goods over an indefinite period, the estimated value for the purposes of paragraph (1) above of the contract shall be the amount calculated by applying one of the following two valuation methods—

- (a) by taking the aggregate of the value of the consideration given by the contracting authority under such contracts for the purchase or hire of goods of the type to be purchased or hired under the contract during the last financial year of the contracting authority ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods of that type to be purchased or hired in the period of 12 months commencing with the relevant time, or
- (b) by estimating the aggregate of the value of the consideration which the contracting authority expects to give under such contracts for the purchase or hire of goods of the type to be purchased or hired under the contract during the period of 12 months from the first date of delivery of the goods to be purchased or hired under the contract or, where the contract is for a definite term of more than 12 months, during the term of the contract,

except that when the goods to be purchased or hired under the contract are required for the sole purposes of a discrete operational unit within the organisation of the contracting authority and—

- (i) the decision whether to purchase or hire goods of that type has been devolved to such a unit, and
- (ii) that decision is taken independently of any other part of the contracting authority,

the valuation methods described in sub-paragraphs (a) and (b) above shall be adapted by aggregating only the value of the consideration which the contracting authority has given or expects to give, as the case may be, for goods of the type to be purchased or hired under the contract which were or are required for the sole purposes of the unit.

(7) The estimated value for the purposes of paragraph (1) above of a contract which falls to be treated as a public supply contract by virtue of sub-paragraph (ii) of the definition of a “public supply contract” in regulation 2(1) (public supply contracts under which goods and services are provided and the services have a greater value than, but are separate from, the goods) shall be that proportion of the value of the consideration which the contracting authority expects to give under the contract which is attributable to the purchase or hire of the goods and to any siting or installation of the goods.

---

commencement of the revised valuation and adjusting that figure to exclude value added tax at a notional rate of 13 per cent. The amount to be treated as the ECU equivalent of 130,000 special drawing rights for the 2 years from 1st January 1990 is published in OJ No. C18, 25.1.90, p.3 and is 134,000 ECU.

(8) Where a public supply contract includes one or more options the estimated value of the contract shall be determined by calculating the highest possible amount which could be payable under the contract.

(9) The relevant time for the purposes of paragraphs (1) and (6)(a) above means, in relation to a public supply contract, the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these Regulations.

(10) A contracting authority shall not enter into separate public supply contracts nor select nor exercise a choice under a valuation method in accordance with paragraph (6) above with the intention of avoiding the application of these Regulations to those contracts.

## PART II

### TECHNICAL SPECIFICATIONS

#### Technical specifications in the contract documents

##### 8. –

(1) In this regulation–

“common technical specification” means a technical specification drawn up in accordance with a procedure recognised by the member States with a view to uniform application in all member States and which has been published in the Official Journal;

“European specification” means a common technical specification or a British standard implementing a European standard;

“European standard” means a standard approved by the European Committee for Standardisation (“CEN”) or by the European Committee for Electrotechnical Standardisation (“CENELEC”) as a “European Standard (“EN”)” or a “Harmonisation Document (“HD”)” according to the Common Rules of those organisations;

“standard” means a technical specification approved by a recognised standardising body for repeated and continuous application, compliance with which is in principle not compulsory; and

“technical specifications” means the technical requirements defining the characteristics required of goods (such as quality, performance, safety or dimensions and requirements in respect of terminology, symbols, tests and testing methods, packaging, marking and labelling) so that the goods are described objectively in a manner which will ensure that they fulfil the use for which they are intended by the contracting authority.

(2) If a contracting authority wishes to lay down technical specifications which the goods to be purchased or hired under a public supply contract must meet it shall specify all such technical specifications in the contract documents.

(3) Subject to paragraph (4) below, the technical specifications in the contract documents relating to a public supply contract shall be defined by reference to any European specifications which are relevant.

(4) A contracting authority may define the technical specifications referred to in paragraph (3) above other than by reference to relevant European specifications if–

(a) the contracting authority is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in the United Kingdom for the goods to be purchased or hired under the contract (but only to the extent that such an obligation is compatible with Community obligations);

- (b) the relevant European specifications do not include provision for establishing conformity to, or it is technically impossible to establish satisfactorily that the goods to be purchased or hired under the contract do conform to, the relevant European specifications;
- (c) definition by reference to the relevant European specifications would conflict with the application of Council Directive [86/361/EEC](#) on the initial stage of mutual recognition of type approval for telecommunication terminal equipment<sup>(16)</sup> or Council Decision [87/95/EEC](#) on standardisation in the field of information technology and telecommunications<sup>(17)</sup> or other Community obligations in specific service or goods areas;
- (d) subject to paragraph (5) below, application of the relevant European specifications would oblige the contracting authority to acquire goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties; or
- (e) the project for which the goods to be purchased or hired under the contract are required is of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

(5) A contracting authority may only define the technical specifications other than by reference to relevant European specifications on the grounds specified in paragraph (4)(d) above where the contracting authority has a clearly defined and recorded strategy for changing over, within a set period, to European specifications.

(6) A contracting authority shall, unless it is impossible, state in the contract notice relating to the contract which of the circumstances specified in paragraph (4) above was the ground for defining the technical specifications other than by reference to European specifications, and shall in any event keep a record of this information which, if the Commission or any member State requests it, it shall send to the Treasury for onward transmission to the Commission or member State which requested it.

(7) In the absence of European specifications relevant to the goods to be purchased or hired under a public supply contract, the technical specifications in the contract documents may be defined by reference to the following standards (and, if they are so defined, preference shall be given to the following standards in the order in which they are listed)–

- (a) British standards implementing international standards;
- (b) other British standards; or
- (c) any other standards.

(8) Subject to paragraph (10) below, the contract documents relating to a public supply contract shall not include technical specifications which refer to goods of a specific make or source or to a particular process and which have the effect of favouring or eliminating particular goods or suppliers.

(9) Without prejudice to the generality of paragraph (8) above, references to trademarks, patents, types, origin or means of production shall not be incorporated into the technical specifications in the contract documents.

(10) Notwithstanding paragraphs (8) and (9) above, a contracting authority may incorporate the references referred to in paragraphs (8) and (9) above into the technical specifications in the contract documents if–

- (a) such references are justified by the subject of the contract, or
- (b) the goods to be purchased or hired under the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers, provided that the references are accompanied by the words “or equivalent”.

---

<sup>(16)</sup> OJ No. L217, 5.8.86, p.21.

<sup>(17)</sup> OJ No. L36, 7.2.87, p.31.



(11) Where the goods to be purchased or hired under a public supply contract are to be the subject of a design competition, or where the supplier is permitted under the terms of the invitation to tender to submit tenders based on different technical specifications, the contracting authority shall not reject a tender on the ground that it has been drawn up by reference to different technical specifications from those used in the United Kingdom if the tender otherwise accords with the terms and conditions of the contract documents and the supplier submits with the tender the evidence necessary for examining the tender and provides such additional explanations as the contracting authority considers necessary.

## PART III

### PROCEDURES LEADING TO THE AWARD OF A PUBLIC SUPPLY CONTRACT

#### Annual notice of expected public supply contracts

##### 9. –

(1) Subject to paragraph (2) below, a GATT contracting authority shall, as soon as possible after the commencement of each of its financial years, send to the Official Journal a notice in a form substantially corresponding to that set out in Part A of Schedule 3 and containing the information therein specified in respect of the public supply contracts in relation to which it expects to seek offers leading to an award during that financial year.

(2) The obligation under paragraph (1) above shall apply only to those public supply contracts which are for the purchase or hire of goods of a type which the contracting authority expects at the date of despatch of the notice to purchase or hire under public supply contracts which have an estimated value (within the meaning of regulation 7) which in aggregate for that type of goods is, or is more than, 750,000 ECU.

#### Selection of contract award procedure

##### 10. –

(1) For the purposes of seeking offers in relation to a proposed public supply contract a contracting authority shall use the open procedure, the restricted procedure or the negotiated procedure and shall decide which of those procedures to use in accordance with the following paragraphs of this regulation.

(2) A contracting authority may use the restricted procedure when to do so is justified by the circumstances, such as–

- (a) when the cost of using the open procedure would be disproportionate to the value of the goods to be purchased or hired under the contract;
- (b) the nature of the goods to be purchased or hired under the contract.

(3) A contracting authority may use the negotiated procedure in the following circumstances–

- (a) subject to paragraph (4) below, in the event that the procedure leading to the award of a public supply contract by the contracting authority using the open or restricted procedure was discontinued–
  - (i) because of irregular tenders, or
  - (ii) following an evaluation made in accordance with regulation 11(6) or 12(4);

and without prejudice to the generality of the meaning of the words “irregular tenders” a tender may be considered irregular if the supplier fails to meet the requirements of, or the tender offers variations on the requirements specified in, the contract documents where this is not permitted under the terms of the invitation to tender, or the goods offered do not

meet the technical specifications (within the meaning of regulation 8(1)) of the contracting authority;

- (b) subject to paragraph (4), below, in the absence of tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;
- (c) when the goods to be purchased or hired under the contract are to be manufactured purely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs;
- (d) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods to be purchased or hired under the contract may only be manufactured or supplied by a particular person;
- (e) when (but only if it is strictly necessary), for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedures are used cannot be met; and
- (f) subject to paragraph (5) below, when the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or addition to, existing goods or an installation and when to obtain the goods from a person other than the person who supplied the existing goods or the installation would oblige the contracting authority to acquire goods having different technical characteristics which would result in—
  - (i) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract, or
  - (ii) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation.

(4) A contracting authority shall not use the negotiated procedure pursuant to paragraphs (3)(a) or (b) above unless the proposed terms of the contract are substantially unaltered from the proposed terms of the contract in relation to which offers were sought using the open or restricted procedure.

(5) A contracting authority shall not use the negotiated procedure pursuant to paragraph (3)(f) above if the term of the proposed contract, or the term of that contract and of any other contract entered into for the same purpose, is more than three years unless there are reasons why it is unavoidable that this period should be exceeded.

(6) In all other circumstances the contracting authority shall use the open procedure.

(7) A contracting authority using the negotiated procedure pursuant to paragraph (3)(b) above shall submit a report recording the fact that it has done so to the Treasury for onward transmission to the Commission.

(8) A contracting authority using the negotiated or restricted procedure shall prepare a record in relation to the contract justifying the use of the procedure applied and specifying—

- (a) the name and address of the contracting authority;
- (b) the value, quantity and type of the goods to be purchased or hired under the contract;
- (c) the number of persons who asked to be selected to tender for or to negotiate the contract;
- (d) the number of persons selected to tender for or to negotiate the contract;
- (e) the number of persons, if any, who, having sought to be selected to tender or to negotiate, were not so selected and the reasons for not selecting them; and
- (f) in the case of a contracting authority using the negotiated procedure, which of the circumstances specified in paragraph (3) above constituted the grounds for using that procedure.

(9) If the Commission requests a report justifying the use of the negotiated or restricted procedure, the contracting authority shall send a written report containing the information specified in paragraph (8) above to the Treasury for onward transmission to the Commission.

### **The open procedure**

#### **11. –**

(1) A contracting authority using the open procedure shall comply with the following paragraphs of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part B of Schedule 3, inviting tenders and containing the information therein specified in relation to the contract.

(3) The date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the contract notice shall be specified in the notice and shall be not less than 52 days from the date of despatch of the notice but, if it is necessary that suppliers be given the opportunity to inspect the premises at which the goods are to be used or documents relating to the contract documents, then that minimum period shall be extended to allow for such inspection.

(4) The contracting authority shall send the contract documents within 4 working days of the receipt of a request from any supplier provided that the documents are requested by the date specified in the contract notice and any fee specified in the notice has accompanied the request.

(5) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a supplier provided that the request is received in sufficient time to enable the contracting authority to supply the information no later than 6 days before the date specified in the contract notice as the final date for the receipt of tenders.

(6) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 20 only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

### **The restricted procedure**

#### **12. –**

(1) A contracting authority using the restricted procedure shall comply with the following paragraphs of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part C of Schedule 3, inviting requests to be selected to tender and containing the information therein specified in relation to the contract.

(3) Subject to paragraph (9) below, the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to tender shall be specified in the contract notice and shall be not less than 37 days from the date of the despatch of the notice.

(4) The contracting authority may exclude a supplier from those persons from whom it will make the selection of the persons to be invited to tender only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(5) The contracting authority shall make the selection of the suppliers to be invited to tender in accordance with regulations 14, 15, 16 and 17; and in making the selection and in issuing invitations the contracting authority shall not discriminate between suppliers on the grounds of their nationality or the member State in which they are established.

(6) The invitation to tender may be sent by letter, telegram, telex, facsimile or telephone but, in the last 4 cases, it shall be confirmed by letter and the letter of invitation shall be sent simultaneously to each supplier selected to tender together with the contract documents.

(7) Subject to paragraph (9) below, the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the invitation to tender shall be specified in the invitation to tender and shall be not less than 40 days from the despatch of the invitation but, if it is necessary that suppliers be given the opportunity to inspect the premises at which the goods are to be used or documents relating to the contract documents, then that minimum period shall be extended to allow for such inspection.

(8) Subject to paragraph (9) below, the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a supplier selected to tender provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 6 days before the date specified in the invitation to tender as the final date for the receipt of tenders.

(9) Where compliance with the minimum periods referred to in paragraphs (3), (7) and (8) above is rendered impracticable for reasons of urgency, the contracting authority may substitute for the periods specified in those paragraphs periods of not less than 15 days, 10 days and 4 days respectively and, in those circumstances, the contracting authority shall send the invitation to tender by the most rapid means possible.

(10) A contracting authority shall not refuse to consider an application to be invited to tender if it is made by letter, telegram, telex or telephone provided that, in the last three cases, it is confirmed by letter without delay.

### **The negotiated procedure**

#### **13. –**

(1) A contracting authority using the negotiated procedure shall comply with the following paragraphs of this regulation except that–

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(3)(b), (c), (d), (e) or (f), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(3)(a) who invites to negotiate the contract every supplier who submitted a tender following an invitation made during the course of the discontinued open or restricted procedure (not being a tender which was excluded pursuant to regulation 11(6)),

need not comply with paragraphs (2) to (6) below.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public supply contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in part D of Schedule 3, inviting requests to be selected to negotiate and containing the information therein specified in relation to the contract.

(3) Subject to paragraph (4) below, the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to negotiate shall be specified in paragraph 6(a) of the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(4) Where compliance with the minimum period of 37 days in paragraph (3) above is rendered impracticable for reasons of urgency, the contracting authority may substitute a period of not less than

15 days and, in those circumstances, the contracting authority must send the invitation to negotiate the contract by the most rapid means possible.

(5) A contracting authority shall not refuse to consider an application to be selected to negotiate if it is made by letter, telegram, telex or telephone provided that, in the last three cases, it is confirmed by letter without delay.

(6) The invitation to negotiate the contract may be sent by letter, telegram, telex, facsimile or telephone but, in the last 4 cases, it shall be confirmed by letter and the letter of invitation shall be sent simultaneously to each supplier selected to negotiate together with the contract documents.

(7) The contracting authority may exclude a supplier from those persons from whom it will make the selection of persons to be invited to negotiate the contract only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the supplier fails to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority; for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(8) The contracting authority may negotiate the terms of the public supply contract with one or more persons and shall make the selection of the suppliers to be invited to negotiate in accordance with regulations 14, 15, 16 and 17; and in making the selection and in issuing the invitation to negotiate the contracting authority shall not discriminate between suppliers on the grounds of their nationality or the member State in which they are established.

## PART IV

### SELECTION OF SUPPLIERS

#### Criteria for rejection of suppliers

##### 14. –

(1) A contracting authority may treat a supplier as ineligible to tender for, or to be included amongst those persons from whom it will make the selection of persons to be invited to tender for or negotiate, a public supply contract in accordance with regulations 11(6), 12(4) and 13(7), or decide not to select a supplier to tender for or to negotiate a public supply contract in accordance with regulations 12(5) and 13(8), on one of the following grounds, namely that the supplier–

- (a) being an individual is bankrupt or has had a receiving order or administration order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of section 268 of the Insolvency Act 1986<sup>(18)</sup>, or article 242 of the Insolvency (Northern Ireland) Order 1989<sup>(19)</sup>, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other State;
- (b) being a partnership constituted under Scots law has granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate;
- (c) being a company has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purposes of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor

---

<sup>(18)</sup> 1986 c. 45.

<sup>(19)</sup> S.I. 1989/2405 (N.I.19).

appointed in respect of the company's business or any part thereof or is the subject of proceedings for any of the above procedures or is the subject of similar procedures under the law of any other State;

- (d) has been convicted of a criminal offence relating to the conduct of his business or profession;
- (e) has committed an act of grave misconduct in the course of his business or profession;
- (f) has not fulfilled obligations relating to the payment of social security contributions under the law of any part of the United Kingdom or of the member State in which the supplier is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or the member State in which the supplier is established;
- (h) is guilty of serious misrepresentation in supplying any information required of him under this regulation and regulations 15, 16 and 17; or
- (i) subject to paragraphs (5) and (6) below, is not registered on the professional or trade register of the member State in which the supplier is established under the conditions laid down by that State.

(2) The contracting authority may require a supplier to provide such information as it considers it needs to make the evaluation in accordance with paragraph (1) above except that it shall accept as conclusive evidence that a supplier does not fall within the grounds specified in paragraphs (1)(a), (b), (c), (d), (f) or (g) above if that supplier provides to the contracting authority–

- (a) in relation to the grounds specified in paragraphs (1)(a), (b), (c) or (d) above,
  - (i) an extract from the judicial record, or
  - (ii) in a member State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;
- (b) in relation to the grounds specified in paragraph (1)(f) or (g) above, a certificate issued by the relevant competent authority;
- (c) in a member State where the documentary evidence specified in paragraphs 2(a) and (b) above is not issued or where it is issued but does not extend to all of the grounds specified in paragraph (1)(a), (b), (c) or (d) above, a declaration on oath, or in a member State which does not provide for a declaration on oath a solemn declaration, made by the supplier before the relevant judicial, administrative or competent authority or a relevant notary public or commissioner for oaths accompanied by a certificate of such relevant authority, notary public or commissioner for oaths attesting the authenticity of the declaration.

(3) In this regulation, “relevant” in relation to a judicial, administrative or competent authority, notary public or commissioner for oaths means such an authority designated by, or a notary public or commissioner of oaths in, the member State in which the supplier is established.

(4) The following are the appropriate professional or trade registers for the purposes of paragraph (1)(i) above–

- in Belgium, the registre du commerce/Handelsregister;
- in Denmark, the Aktieselskabs-Registeret, Forenings-Registere or Handelsregisteret;
- in France, the registre du commerce and repertoire des metiers;
- in Germany, the Handelsregister or Handwerksrolle;
- in Italy, the registro della camera di commercio, industria, agricoltura e artigianato or registro delle commissioni provinciali per l'artigianato;
- in Luxembourg, the registre aux firmes and the role de la chambre des metiers;
- in the Netherlands, the Handelsregister;

in Portugal, the Registo Nacional das Pessoas Colectivas; and  
in Spain, the Registro del Ministerio de Industria y Energia.

(5) A supplier established in the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(i) above if the supplier—

- (a) is established in Ireland and is certified as registered with the Registrar of Friendly Societies, or
- (b) is established in either State and is either—
  - (i) certified as incorporated by the Registrar of Companies, or
  - (ii) is certified as having declared on oath that he is carrying on business in the trade in question in the State in which he is established at a specific place of business and under a specific trading name.

(6) A supplier established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(i) above if the supplier is certified as having declared on oath before a notary public that he exercises the profession of a supplier.

#### **Information as to economic and financial standing**

##### **15. –**

(1) Subject to paragraph (2) below, in assessing whether a supplier meets any minimum standards of economic and financial standing required of suppliers by the contracting authority for the purposes of regulations 11(6), 12(4) and 13(7), and in selecting the suppliers to be invited to tender for or negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a supplier to provide such of that information as it considers it needs to make the assessment or selection)—

- (a) appropriate statements from the supplier's bankers;
- (b) statements of accounts or extracts therefrom relating to the business of the supplier;
- (c) a statement of the overall turnover of the business of the supplier and the turnover in respect of goods of a similar type to the goods to be purchased or hired under the public supply contract in the 3 previous financial years of the supplier.

(2) Where the information specified in paragraph (1) above is not appropriate in a particular case, a contracting authority may require a supplier to provide other information to demonstrate the supplier's economic and financial standing.

(3) A contracting authority which requires information to be provided in accordance with paragraphs (1) and (2) above shall specify in the contract notice or in the invitation to tender the information which the supplier must provide.

(4) Where a supplier is unable for a valid reason to provide the information which the contracting authority has required, the contracting authority shall accept such other information provided by the supplier as the contracting authority considers appropriate.

#### **Information as to technical capacity**

##### **16. –**

(1) In assessing whether a supplier meets any minimum standards of technical capacity required of suppliers by the contracting authority for the purposes of regulations 11(6), 12(4) and 13(7), and in selecting the suppliers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a supplier to provide such of that information as it considers it needs to make the assessment or selection)—

- (a) a list of deliveries by the supplier of goods of a similar type to the goods to be purchased or hired under the public supply contract in the past 3 years, specifying in each case the date of delivery, the consideration received and the identity of the purchaser accompanied by a certificate issued or countersigned by the purchaser confirming the details of the sale or, but only where the purchaser was not a contracting authority, a declaration by the supplier attesting the details of the purchase;
  - (b) a description of the supplier's technical facilities, measures for ensuring quality and study and research facilities in relation to the goods to be purchased or hired under the public supply contract;
  - (c) an indication of the technicians or technical bodies who would be involved with the production of the goods to be purchased or hired under the public supply contract, particularly those responsible for quality control, whether or not they are independent of the supplier;
  - (d) samples, descriptions and photographs of the goods to be purchased or hired under the public supply contract and certification of the authenticity of such samples, descriptions or photographs;
  - (e) certification by official quality control institutes or agencies of recognised competence attesting that the goods to be purchased or hired under the public supply contract conform to standards and technical specifications (within the meaning of regulation 8) identified by the contracting authority;
  - (f) where the goods to be sold or hired under the public supply contract are complex or are required for a special purpose, a check, carried out by the contracting authority or on its behalf by a competent official body of the member State in which the supplier is established, on the production capacity of the supplier in respect of the goods to be purchased or hired under the contract and, if relevant, on the supplier's study and research facilities and quality control measures.
- (2) The contracting authority shall specify in the contract notice which of the information specified in paragraph (1) above it requires to be provided.

### **Supplementary information**

**17.** The contracting authority may require a supplier to provide information supplementing the information supplied in accordance with regulations 14, 15 and 16 or to clarify that information, provided that the information so required relates to the matters specified in regulations 14, 15 and 16.

### **Confidentiality of information**

**18.** A contracting authority shall comply with such requirements as to the confidentiality of information provided to it by a supplier as the supplier may reasonably request.

### **Consortia**

**19.** –

(1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a supplier, acting jointly for the purpose of being awarded a public supply contract.

(2) A contracting authority shall not treat the tender of a consortium as ineligible nor decide not to include a consortium amongst those persons from whom it will make the selection of persons invited to tender for or to negotiate a public supply contract on the grounds that that consortium has not formed a legal entity for the purpose of tendering for or negotiating the contract; but where a contracting authority awards a public supply contract to a consortium it may, if to do so is justified



for the satisfactory performance of the contract, require the consortium to form a legal entity before entering into, or as a term of, the contract.

(3) In these Regulations references to a supplier where the supplier is a consortium includes a reference to each person who is a member of that consortium.

## PART V

### THE AWARD OF A PUBLIC SUPPLY CONTRACT

#### Criteria for the award of a public supply contract

##### 20. –

(1) Subject to paragraphs (4) and (5) below, a contracting authority shall award a public supply contract on the basis of the offer which–

- (a) offers the lowest price, or
- (b) is the most economically advantageous to the contracting authority.

(2) The criteria which a contracting authority may use to determine that an offer is the most economically advantageous include price, delivery date, running costs, cost effectiveness, quality, aesthetic and functional characteristics, technical merit, after sales service and technical assistance.

(3) Where a contracting authority intends to award a public supply contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in the contract notice or in the contract documents.

(4) If an offer for a public supply contract is obviously abnormally low the contracting authority shall request an explanation of the offer, or of those parts which it considers contribute to the offer being abnormally low, and shall–

- (a) if awarding the contract on the basis of the offer which offers the lowest price, examine the details of all the offers made, taking into account any explanation given to it of the abnormally low tender, before awarding the contract, or
- (b) if awarding the contract on the basis of the offer which is the most economically advantageous, take any such explanation into account in assessing which is the most economically advantageous offer.

(5) A contracting authority may, if it is not satisfied with the explanation of any supplier given in respect of an abnormally low offer, reject that offer but, if a contracting authority which rejects an offer for this reason is awarding the contract on the basis of the offer which offers the lowest price, it shall send a report justifying the rejection to the Treasury for onward transmission to the Commission.

(6) For the purposes of this regulation an “offer” includes a bid by one part of a contracting authority to make available to another part of the contracting authority the goods required by it when the former part is invited by the latter part to compete with the offers sought from other persons.

#### Contract award notice

##### 21. –

(1) A contracting authority which has awarded a public supply contract shall, no later than 48 days after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part E of Schedule 3, and, subject to paragraph (2) below, including the information therein specified in relation to the contract.

(2) Any of the information specified in Part E of Schedule 3 to be included in the contract award notice may be omitted in a particular case where to publish such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of any person or might prejudice fair competition between suppliers.

## PART VI

### MISCELLANEOUS

#### Public service bodies

**22.** Where a contracting authority, other than one which is a contracting authority only by reason of being a GATT contracting authority, grants to a person other than a contracting authority special or exclusive rights to carry on a service for the benefit of the public, it shall impose an express duty on that person not to discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds of nationality against a person who is a national of and established in a member State or on the grounds that the goods to be supplied under the contract originate in another member State.

#### Statistical and other reports

**23.** –

(1) A GATT contracting authority shall, no later than 31 July in each year, send to the Treasury a report specifying–

- (a) in relation to each public supply contract awarded by it during the reporting period–
  - (i) the value (estimated if necessary) of the consideration given or to be given under the contract;
  - (ii) whether the open, restricted or negotiated procedure was used;
  - (iii) if the negotiated procedure was used, pursuant to which provision of regulation 10(3) that procedure was used;
  - (iv) the type of goods purchased or hired or to be purchased or hired under the contract; and
  - (v) the nationality of the person to whom the contract was awarded; and
- (b) the aggregate value (estimated if necessary) of the consideration payable under the public supply contracts excluded from the operation of these Regulations by regulation 7 and awarded by it during the reporting period.

(2) A contracting authority which is not a GATT contracting authority shall, no later than 31 July 1993 and 31 July in each alternate year thereafter, send to the Treasury a report specifying in relation to each public supply contract awarded by it during the reporting period the information specified in paragraphs (1)(a)(i) to (v) above.

(3) A contracting authority shall send to the Treasury a report containing such other information as the Treasury may from time to time require in respect of a particular public supply contract (including public supply contracts excluded from the application of these Regulations by regulations 6 and 7) for the purpose of informing the Commission.

(4) In this regulation “the reporting period” means the year preceding the year in which the reports referred to in paragraphs (1) and (2) above are to be made.

## **Responsibility for obtaining reports**

### **24. –**

(1) Where a contracting authority is not a Minister of the Crown or a government department, that contracting authority shall send any report which it is required in accordance with regulations 8(6), 10(7), 10(9), 20(5) and 23 to send to the Treasury instead to the Minister responsible for that contracting authority and that Minister shall be responsible for sending the report to the Treasury.

(2) The Minister responsible for a contracting authority shall be the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the contracting authority; and any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a contracting authority shall be determined by the Treasury whose determination shall be final.

(3) The requirement on a contracting authority to send any report in accordance with paragraph (1) above to the Minister of the Crown responsible for that contracting authority shall be enforceable, on the application of the Minister responsible, by mandamus or, in Scotland, for an order for specific performance.

(4) Proceedings under paragraph (3) above brought in Scotland shall be brought before the Court of Session.

(5) In the application of this regulation to Northern Ireland references to the Minister shall include references to the head of a Northern Ireland department.

## **Publication of notices**

### **25. –**

(1) Any notice required by these Regulations to be sent to the Official Journal shall be sent by the most appropriate means to the Office for Official Publications of the European Communities<sup>(20)</sup> and where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulations 12(9) and 13(4), the notice shall be sent by telex, telegram or facsimile.

(2) Any such notice shall not contain more than 650 words.

(3) The contracting authority shall retain evidence of the date of despatch to the Official Journal of each notice.

(4) The contracting authority shall not place a contract notice in the press or like publications in the United Kingdom before the date on which the notice is despatched in accordance with paragraph (1) above and if it does, after that date, so place the notice it shall not add to the notice any information in relation to the public supply contract which was not contained in the notice sent to the Official Journal.

## **PART VII**

### **APPLICATIONS TO THE COURT**

## **Enforcement of obligations relating to a public supply contract**

### **26. –**

(1) The obligation on a contracting authority to comply with the provisions of these Regulations other than regulations 8(6), 10(7), 10(9), 20(5), 23 and 24(1), and with any enforceable Community

---

<sup>(20)</sup> The address for the Office for Official Publications of the European Communities is 2 Rue Mercier, 2985, Luxembourg (tel 499 28-1, telex 1324 pubof lu, fax: 49 00 03, 49 57 19).

obligation in respect of a public supply contract (other than one excluded from the application of these Regulations by regulations 6 and 7), is a duty owed to suppliers.

(2) A breach of the duty owed pursuant to paragraph (1) above shall not be a criminal offence but any breach of the duty shall be actionable by any supplier who, in consequence, suffers, or risks suffering, loss or damage.

(3) Proceedings under this regulation shall be brought in England and Wales and in Northern Ireland in the High Court and, in Scotland, before the Court of Session.

(4) Proceedings under this regulation may not be brought unless—

- (a) the supplier bringing the proceedings has informed the contracting authority of the breach or apprehended breach of the duty owed to him pursuant to paragraph (1) above by that contracting authority and of his intention to bring proceedings under this regulation in respect of it; and
- (b) they are brought promptly and in any event within 3 months from the date when grounds for the bringing of the proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought.

(5) Subject to paragraph (6) below, but otherwise without prejudice to any other powers of the Court, in proceedings brought under this regulation the Court may—

- (a) by interim order suspend the procedure leading to the award of the contract in relation to which the breach of the duty owed pursuant to paragraph (1) above is alleged, or suspend the implementation of any decision or action taken by the contracting authority in the course of following such procedure; and
- (b) if satisfied that a decision or action taken by a contracting authority was in breach of the duty owed pursuant to paragraph (1) above—
  - (i) order the setting aside of that decision or action or order the contracting authority to amend any document, or
  - (ii) award damages to a supplier who has suffered loss or damage as a consequence of the breach, or
  - (iii) do both of those things.

(6) In proceedings under this regulation the Court shall not have power to order any remedy other than an award of damages in respect of a breach of the duty owed pursuant to paragraph (1) above if the contract in relation to which the breach occurred had been entered into.

(7) Notwithstanding sections 21 and 42 of the Crown Proceedings Act 1947<sup>(21)</sup>, in proceedings brought under this regulation against the Crown the court shall have power to grant an injunction or interdict.

*Irvine Patnick  
Thomas Sackville*

Two of the Lords Commissioners of Her  
Majesty's Treasury

28th November 1991

---

(21) 1947 c. 44; the Crown Proceedings Act 1947 was extended to Northern Ireland in relation to Her Majesty's Government in the United Kingdom and in Northern Ireland by and with the additions, exceptions and modifications set out in the Crown Proceedings (Northern Ireland) Order 1981, to which there is an amendment not relevant to these regulations.

## SCHEDULE 1

Regulation 2(1)

### GATT CONTRACTING AUTHORITIES

#### Cabinet Office

- Civil Service College
- Civil Service Commission
- Civil Service Occupational Health Service
- Office of the Minister for the Civil Service
- Parliamentary Counsel Office

#### Central Office of Information

Charity Commission Crown Estate Commissioners

#### Crown Prosecution Service

#### Customs and Excise Department

#### Department for National Savings

#### Department of Education and Science

- University Grants Committee

#### Department of Employment

- Employment Appeal Tribunal
- Industrial Tribunals
- Office of Manpower Economics

#### Department of Energy

#### Department of Health

- Central Council for Education and Training in Social Work
- Dental Estimates Board
- English National Board for Nursing, Midwifery and Health Visitors
- Medical Boards and Examining Medical Officers (War Pensions)
- National Health Service Authorities
- Prescription Pricing Authority
- Public Health Laboratory Service Board
- Regional Medical Service
- U.K. Central Council for Nursing, Midwifery and Health Visiting

#### Department of Social Security

- Attendance Allowance Board
- Occupational Pensions Board
- Social Security Advisory Committee
- Supplementary Benefits Appeal Tribunals

#### Department of the Environment

- Building Research Establishment
- Commons Commissioners
- Countryside Commission

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Fire Research Station (Boreham Wood)  
Historic Buildings and Monuments Commission  
Local Valuation Panels  
Property Services Agency  
Rent Assessment Panels  
Royal Commission on Environmental Pollution  
Royal Commission on Historical Monuments of England  
Royal Fine Art Commission (England)  
Department of the Procurator General and Treasury Solicitor  
    Legal Secretariat to the Law Officers  
Department of Trade and Industry  
    Laboratory of the Government Chemist  
    National Engineering Laboratory  
    National Physical Laboratory  
    Warren Spring Laboratory  
    National Weights and Measures Laboratory  
    Domestic Coal Consumers' Council  
    Electricity Consultative Councils for England and Wales  
    Gas Consumers' Council  
    Transport Users Consultative Committees  
    Monopolies and Mergers Commission  
    Patent Office  
Department of Transport  
    Coastguard Services  
    Transport and Road Research Laboratory  
    Transport Tribunal  
Export Credits Guarantee Department  
Foreign and Commonwealth Office  
    Government Communications Headquarters  
    Wilton Park Conference Centre  
Government Actuary's Department  
Home Office  
    Boundary Commission for England  
    Gaming Board for Great Britain  
    Inspectors of Constabulary  
    Parole Board and Local Review Committees  
House of Commons  
House of Lords  
Inland Revenue, Board of

Intervention Board for Agricultural Produce  
Lord Chancellor's Department  
    Council on Tribunals  
    County Courts (England and Wales)  
    Immigration Appellate Authorities  
        Immigration Adjudicators  
        Immigration Appeal Tribunal  
    Judge Advocate General and Judge Advocate of the Fleet  
    Lands Tribunal  
    Law Commission  
    Legal Aid Fund (England and Wales)  
    Pensions Appeal Tribunals  
    Public Trustee Office  
    Office of the Social Security Commissioners  
    Special Commissioners for Income Tax (England and Wales)  
    Supreme Court (England and Wales)  
        Court of Appeal: Civil and Criminal Divisions  
        Courts Martial Appeal Court  
        Crown Court  
        High Court  
    Value Added Tax Tribunals  
Ministry of Agriculture Fisheries and Food  
    Advisory Services  
    Agricultural Development and Advisory Service  
    Agricultural Dwelling House Advisory Committees  
    Agricultural Land Tribunals  
    Agricultural Science Laboratories  
    Agricultural Wages Board and Committees  
    Cattle Breeding Centre  
    Plant Variety Rights Office  
    Royal Botanic Gardens, Kew  
Ministry of Defence  
    Meteorological Office  
    Procurement Executive  
National Audit Office  
National Investment Loans Office  
Northern Ireland Court Service  
    Coroners Courts  
    County Courts  
    Crown Courts

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Enforcement of Judgements Office  
Legal Aid Fund  
Magistrates Court  
Pensions Appeals Tribunals  
Supreme Court of Judicature and Courts of Criminal Appeal  
Northern Ireland, Department of Agriculture  
Northern Ireland, Department for Economic Development  
Northern Ireland, Department of Education  
Northern Ireland, Department of the Environment  
Northern Ireland, Department of Finance and Personnel  
Northern Ireland, Department of Health and Social Services  
Northern Ireland Office  
    Crown Solicitor's Office  
    Department of the Director of Public Prosecutions for Northern Ireland  
    Northern Ireland Forensic Science Laboratory  
    Office of Chief Electoral Officer for Northern Ireland  
    Police Authority for Northern Ireland  
    Probation Board for Northern Ireland  
    State Pathologist Service  
Office of Arts and Libraries  
    British Library  
    British Museum  
    British Museum (Natural History)  
    Imperial War Museum  
    Museums and Galleries Commission  
    National Gallery  
    National Maritime Museum  
    National Portrait Gallery  
    Science Museum  
    Tate Gallery  
    Victoria and Albert Museum  
    Wallace Collection  
Office of Fair Trading  
Office of Population Censuses and Surveys  
    National Health Service Central Register  
Office of the Parliamentary Commissioner for Administration and Health Service Commissioners  
Overseas Development Administration  
    Overseas Development and National Research Institute  
Paymaster General's Office



Postal Business of the Post Office  
Privy Council Office  
Public Record Office  
Registry of Friendly Societies  
Royal Commission on Historical Manuscripts  
Royal Hospital, Chelsea  
Royal Mint  
Scotland, Crown Office and Procurator Fiscal Service  
Scotland, Department of the Registers of Scotland  
Scotland, General Register Office  
    National Health Service Central Register  
Scotland, Lord Advocate's Department  
Scotland, Queen's and Lord Treasurer's Remembrancer  
Scottish Courts Administration  
    Accountant of Court's Office  
    Court of Justiciary  
    Court of Session  
    Lands Tribunal for Scotland  
    Pensions Appeal Tribunals  
    Scottish Land Court  
    Scottish Law Commission  
    Sheriff Courts  
    Social Security Commissioners' Office  
Scottish Office  
    Central Services  
    Department of Agriculture and Fisheries for Scotland:  
        Artificial Insemination Service  
        Crofters Commission  
        Red Deer Commission  
        Royal Botanic Garden, Edinburgh  
    Industry Department for Scotland  
        Scottish Electricity Consultative Councils  
    Scottish Development Department  
        Rent Assessment Panel and Committees  
        Royal Commission on the Ancient and Historical Monuments of Scotland  
        Royal Fine Art Commission for Scotland  
    Scottish Education Department  
        National Galleries of Scotland  
        National Library of Scotland  
        National Museums of Scotland

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Scottish Home and Health Departments

HM Inspectorate of Constabulary

Local Health Councils

Mental Welfare Commission for Scotland

National Board for Nursing, Midwifery and Health Visiting for Scotland

Parole Board for Scotland and Local Review Committees

Scottish Antibody Production Unit

Scottish Council for Postgraduate Medical Education

Scottish Crime Squad

Scottish Criminal Record Office

Scottish Fire Service Training School

Scottish Health Boards

Scottish Health Service–Common Services Agency

Scottish Health Service Planning Council

Scottish Police College

Scottish Record Office

HM Stationery Office

HM Treasury

Central Computer and Telecommunications Agency

Chessington Computer Centre

Civil Service Catering Organisation

National Economic Development Council

Rating of Government Property Department

Welsh Office

Ancient Monuments (Wales) Commission

Council for the Education and Training of Health Visitors

Local Government Boundary Commission for Wales

Local Valuation Panels and Courts

National Health Service Authorities

Rent Control Tribunals and Rent Assessment Panels and Committees

SCHEDULE 2

Regulation 7(2)(a)

GOODS FOR THE PURPOSES OF THE THRESHOLDS

The goods for the purposes of regulation 7(2)(a) are those specified in the following chapters of the CCCN (Customs Co-operation Council Nomenclature)

Chapter 25: Salt; sulphur; earths and stone; plastering materials, lime and cement

Chapter 26: Metallic ores, slag and ash

Chapter 27: Mineral fuels, mineral oils and products of their distillation; bituminous substances; mineral waxes

except:

ex 27.10: special engine fuels

Chapter 28: Inorganic chemicals; organic and inorganic compounds of precious metals, of rare-earth metals, of radio-active elements and of isotopes

except:

ex 28.09: explosives

ex 28.13: explosives

ex 28.14: tear gas

ex 28.28: explosives

ex 28.32: explosives

ex 28.39: explosives

ex 28.50: toxic products

ex 28.51: toxic products

ex 28.54: explosives

Chapter 29: Organic chemicals

except:

ex 29.03: explosives

ex 29.04: explosives

ex 29.07: explosives

ex 29.08: explosives

ex 29.11: explosives

ex 29.12: explosives

ex 29.13: toxic products

ex 29.14: toxic products

ex 29.15: toxic products

ex 29.21: toxic products

ex 29.22: toxic products

ex 29.23: toxic products

ex 29.26: explosives

ex 29.27: toxic products

ex 29.29: explosives

Chapter 30: Pharmaceutical products

Chapter 31: Fertilizers

Chapter 32: Tanning and dyeing extracts; tannins and their derivatives; dyes, colours, paints and varnishes; putty, fillers and stoppings; inks

Chapter 33: Essential oils and resinoids; perfumery, cosmetic or toilet preparations

Chapter 34: Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and "dental waxes"

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- Chapter 35: Albuminoidal substances; glues; enzymes
- Chapter 37: Photographs and cinematographic goods
- Chapter 38: Miscellaneous chemical products
  - except:
  - ex 38.19: toxic products
- Chapter 39: Artificial resins and plastic materials, cellulose esters and ethers; articles thereof
  - except:
  - ex 39.03: explosives
- Chapter 40: Rubber, synthetic rubber, factice, and articles thereof
  - except:
  - ex 40.11: bullet-proof tyres
- Chapter 41: Raw hides and skins (other than furskins) and leather
- Chapter 42: Articles of leather; saddlery and harness; travel goods, handbags and similar containers; articles of animal gut (other than silk-worm gut)
- Chapter 43: Furskins and artificial fur; manufacturers thereof
- Chapter 44: Wood and articles of wood; wood charcoal
- Chapter 45: Cork and articles of cork
- Chapter 46: Manufactures of straw of esparto and of other plaiting materials; basketware and wickerwork
- Chapter 47: Paper-making material
- Chapter 48: Paper and paperboard; articles of paper pulp, of paper or of paperboard
- Chapter 49: Printed books, newspapers, pictures and other products of the printing industry; manuscripts, typescripts and plans
- Chapter 65: Headgear and parts thereof
- Chapter 66: Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
- Chapter 67: Prepared feathers and down and articles made of feathers or of down; artificial flowers; articles of human hair
- Chapter 68: Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
- Chapter 69: Ceramic products
- Chapter 70: Glass and glassware
- Chapter 71: Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
- Chapter 73: Iron and steel and articles thereof
- Chapter 74: Copper and articles thereof
- Chapter 75: Nickel and articles thereof
- Chapter 76: Aluminium and articles thereof
- Chapter 77: Magnesium and beryllium and articles thereof
- Chapter 78: Lead and articles thereof
- Chapter 79: Zinc and articles thereof
- Chapter 80: Tin and articles thereof
- Chapter 81: Other base metals employed in metallurgy and articles thereof

Chapter 82: Tools, implements, cutlery, spoons and forks, of base metal; parts thereof

except:

ex 82.05: tools

ex 82.07: tools, parts

Chapter 83: Miscellaneous articles of base metal

Chapter 84: Boilers, machinery and mechanical appliances; parts thereof

except:

ex 84.06: engines

ex 84.08: other engines

ex 84.45: machinery

ex 84.53: automatic data-processing machines

ex 84.55: parts of machines under heading No.84.53

ex 84.59: nuclear reactors

Chapter 85: Electrical machinery and equipment; parts thereof

except:

ex 85.13: telecommunication equipment

ex 85.15: transmission apparatus

Chapter 86: Railway and tramway locomotives, rolling-stock and parts thereof; railway and tramway tracks fixtures and fittings; traffic signalling equipment of all kinds (not electrically powered)

except:

ex 86.02: armoured locomotives, electric

ex 86.03: other armoured locomotives

ex 86.05: armoured wagons

ex 86.06: repair wagons

ex 86.07: wagons

Chapter 87: Vehicles, other than railway or tramway rolling-stock, and parts thereof

except:

87.08: tanks and other armoured vehicles

ex 87.01: tractors

ex 87.02: military vehicles

ex 87.03: breakdown lorries

ex 87.09: motorcycles

ex 87.14: trailers

Chapter 89: Ships, boats and floating structures

except:

ex 89.01 A: warships

Chapter 90: Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus; parts thereof

except:

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- ex 90.05: binoculars
- ex 90.13: miscellaneous instruments, lasers
- ex 90.14: telemeters
- ex 90.28: electrical and electronic measuring instruments
- ex 90.11: microscopes
- ex 90.17: medical instruments
- ex 90.18: mechano-therapy appliances
- ex 90.19: orthopaedic appliances
- ex 90.20: X-ray apparatus

Chapter 91: Clocks and watches and parts thereof

Chapter 92: Musical instruments; sound recorders or reproducers; television image and sound recorders or reproducers; parts and accessories of such articles

Chapter 94: Furniture and parts thereof; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings

except:

- ex 94.01 A: aircraft seats

Chapter 95: Articles and manufactures of carving or moulding material

Chapter 96: Brooms, brushes, powder-puffs and sieves

Chapter 98: Miscellaneous manufactured articles

### SCHEDULE 3

Regulations 9(1), 11(2), 12(2), 13(2) and  
21(1)

## FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL JOURNAL

### PART A

#### ANNUAL NOTICE OF EXPECTED PUBLIC SUPPLY CONTRACTS

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority and of the service from which additional information may be obtained.
2. Nature and quantity or value of the goods to be supplied.
3. Estimated date of the commencement of the procedures leading to the award of the contract(s) (if known).
4. Other information.
5. Date of despatch of the notice.

## PART B

### OPEN PROCEDURE NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.

- (a) (a) Award procedure chosen;
- (b) form of contract for which offers are invited.
- (a) (a) Place of delivery;
- (b) nature and quantity of the goods to be supplied;
- (c) indication of whether the suppliers can tender for some and/or all of the goods required;
- (d) derogation from the use of European specifications.(22)

4. Time limit for delivery, if any.

- (a) (a) Name and address of the service from which the contract documents may be requested;
- (b) final date for making such requests;
- (c) where applicable, the amount and terms of payment of any sum payable for such documents.
- (a) (a) Final date for receipt of tenders;
- (b) address to which they must be sent;
- (c) language(s) in which they must be drawn up.
- (a) (a) Persons authorised to be present at the opening of tenders;
- (b) date, time and place of opening.

8. Where applicable, any deposits and guarantees required.

9. The main terms concerning financing and payment and/or references to the relevant provisions.

10. Where applicable, the legal form to be taken by the grouping of suppliers winning the contract.

11. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing and technical capacity required of the supplier.

12. Period during which the tenderer is bound to keep open his tender.

13. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned if they do not appear in the contract documents.

14. Other information.

15. Date of despatch of the notice.

## PART C

### RESTRICTED PROCEDURE NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.

---

(22) Within the meaning of regulation 8.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) (a) Award procedure chosen;
  - (b) where applicable, justification for use of the shorter time limits;(23)
  - (c) form of contract for which offers are invited.
  - (a) (a) Place of delivery;
  - (b) nature and quantity of goods to be delivered;
  - (c) indication of whether the supplier can tender for some and/or all of the goods required;
  - (d) derogation from the use of European specifications.(24)
4. Time limit on delivery, if any.
5. Where applicable, the legal form to be assumed by the grouping of suppliers winning the contract.
- (a) (a) Final date for the receipt of requests to participate;
  - (b) address to which they must be sent;
  - (c) language(s) in which they must be drawn up.
7. Final date for the despatch of invitations to tender.
8. Information concerning the supplier's own position, and the information and formalities necessary for an appraisal of the minimum standards of economic and financial standing and technical capacity required of him.
9. Criteria for the award of the contract if these are not stated in the invitation to tender.
10. Other information.
11. Date of despatch of the notice.

## PART D

### NEGOTIATED PROCEDURE NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile number of the contracting authority.
- (a) (a) Award procedure chosen;
  - (b) where applicable, justification for use of the shorter time limits;(25)
  - (c) where applicable, form of contract for which offers are invited.
  - (a) (a) Place of delivery;
  - (b) nature and quantity of goods to be delivered;
  - (c) indication of whether the suppliers can tender for some and/or all of the goods required;
  - (d) derogation from the use of European specifications.(24)
4. Time limit on delivery, if any.
5. Where applicable, the legal form to be assumed by a grouping of suppliers winning the contract.
- (a) (a) Final date for the receipt of requests to participate;

(23) In accordance with regulation 12.

(24) Within the meaning of regulation 8.

(25) In accordance with regulation 13.

(24) Within the meaning of regulation 8.



- (b) address to which they must be sent;
  - (c) language(s) in which they must be drawn up.
7. Information concerning the supplier's own position, and the information and formalities necessary for an appraisal of the minimum standards of economic and financial standing and technical capacity required of him.
8. Where applicable, the names and addresses of suppliers already selected by the awarding authority.
9. Date(s) of previous publications in the Official Journal of the European Communities.
10. Other information.
11. Date of despatch of the notice.

## PART E

### CONTRACT AWARD NOTICE

1. Name and address of contracting authority.
  - (a) Award procedure chosen;
  - (b) in respect of GATT contracting authorities, where appropriate, justification for the use of the negotiated procedure.(26)
3. Date of award of contract.
4. Criteria for award of contract.
5. Number of offers received.
6. Name(s) and address(es) of supplier(s).
7. Nature and quantity of goods supplied, where applicable, by supplier.
8. Price or range of prices.
9. Other information.
10. Date of publication of the tender notice in the Official Journal of the European Communities.
11. Date of despatch of the notice.

---

### EXPLANATORY NOTE

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

These Regulations enact in its entirety Council Directive [77/62/EEC](#) co-ordinating procedures for the award of public supply contracts (OJ No. L13, 15.1.77, p.1), as amended by Council Directives [80/767/EEC](#) (OJ No. L215, 18.8.80, p.1), and [88/295/EEC](#) (OJ No. L127, 20.5.88, p.1). They also

---

(26) In accordance with regulation 10(3).

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

implement, to the extent that it relates to that Directive, Council Directive [89/665/EEC](#) on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ No. L395, 30.12.89, p.33).

The Regulations apply to certain public bodies called in the regulations “contracting authorities” (regulation 3) when they are seeking offers in relation to certain contracts for the purchase or hire of goods called in the Regulations “public supply contracts” (regulations 2(1) and 5). They deal in particular with the treatment to be accorded to suppliers or potential suppliers who are nationals of and established in a member State (regulation 4). Certain contracts are excluded from the application of the Regulations, principally where the contracting authority operates in the transport, water, energy and telecommunications fields, secret contracts or contracts for the purchase of certain defence material or connected with international agreements (regulation 6) and those contracts where the value of the contract is beneath the threshold for coverage (regulation 7).

The principal requirement of the Regulations is that, in seeking offers in relation to a public supply contract, a contracting authority must use one of three procedures: the open procedure, whereby any person who is interested may submit a tender; the restricted procedure whereby only those persons selected by the contracting authority may submit tenders; and the negotiated procedure whereby the contracting authority negotiates the terms of the contract with one or more persons selected by it. The Regulations lay down provisions for making the choice of procedure. The negotiated procedure may only be used in certain limited circumstances (regulation 10).

The contracting authority is required to publicise its intention to seek offers in relation to a public supply contract in the Official Journal of the European Communities although this requirement is dispensed with in most circumstances when the negotiated procedure is used. The form of the advertisement and the information which it has to contain in relation to the proposed contract is specified in Schedule 3. If the notice is also to be published in the United Kingdom press it must be limited to the information published in the Official Journal and must not be published before the notice is sent to the Official Journal (regulation 25). The various procedures also lay down the time to be allowed for the response by potential suppliers to the invitations and for obtaining relevant documents. The Regulations also specify the matters to which the contracting authority may have regard in treating suppliers as ineligible or in selecting suppliers to tender for or to negotiate the contract (regulations 11 to 13). The detailed rules for the selection of suppliers are laid down and relate to their business and professional status, their economic and financial standing and their technical capacity. The contracting authority is restricted in the information on which it may rely to demonstrate these matters (regulations 14 to 17).

The contracting authority is required to award a public supply contract on the basis either of the offer (including in-house bids) which offers the lowest price or the one which is the most economically advantageous (regulation 20).

There are various other requirements in the Regulations. The most important is the requirement that where the contracting authority wishes to lay down technical specifications which the goods must meet all such specifications must be specified in the contract documents and that, except in certain circumstances, these specifications must be defined by reference to European specifications. It is also provided that, except where it is not possible to describe the goods otherwise, the technical specifications may not refer to goods of a specific make or source or to a particular process which have the effect of favouring or eliminating certain goods or suppliers (regulation 8). Certain contracting authorities are also required to publicise in the Official Journal at the beginning of their financial year certain public supply contracts which they expect to award during the course of that year (regulation 9). All contracting authorities are required to publicise in the Official Journal information about the public supply contracts they have awarded (regulation 21). There is a requirement that a body granted a special or exclusive right to carry on a service for the benefit of the public should be subject to a duty not to discriminate in awarding a supply contract on the grounds of nationality against nationals of a member State or on the grounds that the goods to be supplied originate in another member State (regulation 22). The contracting authorities are also required to

submit various reports in respect of public supply contracts awarded by them, in particular, an annual or biennial report (regulation 23).

Finally, the Regulations provide that the obligation on a contracting authority to comply with the Regulations, and with any enforceable Community obligation in relation to the award of a public supply contract, is a duty owed to suppliers. A breach of the duty is not a criminal offence but is actionable by a supplier. Proceedings are assigned to the High Court in England, Wales and Northern Ireland and to the Court of Session in Scotland. The court is given power to grant appropriate interim and final relief and to award damages except that, where the contract in respect of which there has been an infringement has already been entered into, the court's powers are restricted to awarding damages (regulation 26).