
STATUTORY INSTRUMENTS

1991 No. 2679

The Public Supply Contracts Regulations 1991

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);

“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](#)(1);

“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(2);

“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;

(1) 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).
(2) Cmnd. 7662.

“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;

“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(3)); 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](#)((4) as published from time to time in the Official Journal(5).

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

(3) [1971 c. 80](#).

(4) 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).

(5) 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.

- (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⁽⁶⁾,
 - (h) the Fire Authority for Northern Ireland,
 - (i) a police authority constituted under section 2 of the Police Act 1964⁽⁷⁾ 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⁽⁸⁾,
 - (l) a joint authority established by Part IV of that Act,
 - (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⁽⁹⁾,
 - (q) a joint education board constituted under the provisions of Part I of the first Schedule to the Education Act 1944⁽¹⁰⁾,
 - (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

⁽⁶⁾ 1947 c. 41.

⁽⁷⁾ 1964 c. 48.

⁽⁸⁾ 1985 c. 51.

⁽⁹⁾ 1972 c. 70.

⁽¹⁰⁾ 1944 c. 31.

- (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⁽¹¹⁾.
- (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⁽¹²⁾.
- (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.
- (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;

(11) 1973 c. 65.

(12) 1972 c. 9 (N.I.).

- (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⁽¹³⁾;
- (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.

⁽¹³⁾ 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 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.

(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.

(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.