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STATUTORY INSTRUMENTS

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**1991 No. 2680**

**The Public Works Contracts Regulations 1991**

**PART I**  
**GENERAL**

**Title and commencement**

1. These Regulations may be cited as the Public Works 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;

“carrying out”, in relation to a work or works, means the construction or the design and construction of that work or those works;

“the Commission” means the Commission of the Communities;

“concessionaire” means a person who has entered into a public works concession contract with a contracting authority;

“contract documents” means the invitation to tender for or negotiate the contract, the proposed conditions of contract, the specifications or description of the work or works required by the contracting authority and of the materials or goods to be used in or for it or them, and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with regulation 11(2), 12(2), 13(2), 25(2) or 26(3);

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

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

“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;

“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 works contract whereby the 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 works contract whereby all interested persons may tender for the contract;

“public housing scheme works contract” means a public works contract relating to the design and construction of a public housing scheme;

“public works concession contract” means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract;

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

- (a) for the carrying out of a work or works for a contracting authority, or
- (b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements;

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

“work” means the outcome of any works which is sufficient of itself to fulfil an economic and technical function;

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971((2));

“works” means any of the activities specified in Schedule 1, being activities contained in the general industrial classification of economic activities within the Communities; 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 shall be calculated by reference to the exchange rate for the time being applying for the purposes of Council Directive [71/305/EEC](#)((3)) as published from time to time in the Official Journal.((4))

(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 2 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.

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(2) [1971 c. 80](#).

(3) OJ No. L185, 16.8.71, p. 5, as amended by Council Directive [89/440/EEC](#) (OJ No. L210, 21.7.89, p. 1).

(4) The rates are determined for each successive period of 2 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.

(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((5)),
- (h) the Fire Authority for Northern Ireland,
- (i) a police authority constituted under section 2 of the Police Act 1964((6)) 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((7)),
- (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((8)), and
- (q) a joint education board constituted under the provisions of Part I of the First Schedule to the Education Act 1944((9)),
- (r) a corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, 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, and
- (s) associations of or formed by one or more of the above.

(2) In the application of these Regulations to England and Wales, “local authority” in paragraph (1) above means–

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(5) 1947 c. 41.  
(6) 1964 c. 48.  
(7) 1985 c. 51.  
(8) 1972 c. 70.  
(9) 1944 c. 31.

- (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.((10))

(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.((11))

(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 means a person whose function it is to enter into contracts for that entity.

#### **Contractors**

4. –

(1) For the purposes of these Regulations a “contractor” means a person–

- (a) who sought, or who seeks, or would have wished, to be the person to whom a public works contract is awarded, and
- (b) who is a national of and established in a member State.

(2) When 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 works contract other than public works contracts excluded from the operation of these Regulations by regulations 6 and 7; except that in Parts II, III, IV and V of these Regulations and in regulations 24, 27 and 28 references to a “public works contract” shall not include a public works concession contract.

#### **General exclusions**

6. These Regulations shall not apply to the seeking of offers in relation to a proposed public works 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;
- (d) which is classified as secret or where the carrying out of the work or works 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;

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(10) 1973 c. 65.

(11) 1972 c. 9 (N.I.)

- (e) 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 provides for the carrying out of works 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 works contract where the estimated value of the contract (net of value added tax) at the relevant time is less than 5,000,000 ECU.

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

(3) Subject to paragraphs (4) and (6) below, the estimated value for the purposes of paragraph (1) above of a public works contract which is one of a number of contracts entered into or to be entered into for the carrying out of a work shall be the aggregate of the value of the consideration which the contracting authority has paid or expects to give under all the contracts for the carrying out of the work.

(4) Paragraph (3) above shall not apply to any public works contract (unless the contracting authority chooses to apply that paragraph to that contract) if that contract has an estimated value (calculated in accordance with paragraph (2) above) of less than 1,000,000 ECU, and the aggregate value of that contract and of any other public works contract for the carrying out of the work in respect of which the contracting authority takes advantage of the disapplication of paragraph (3) above by virtue of this paragraph is less than 20 per cent of the aggregate of the value of the consideration which the contracting authority has paid or expects to pay under all the contracts for the carrying out of the work.

(5) Subject to paragraph (6) below, the estimated value for the purposes of paragraph (1) above of a public works concession contract shall be the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not propose to grant a concession.

(6) Where a contracting authority intends to provide any goods to the person awarded a public works contract for the purpose of carrying out that contract, the value of the consideration for the purposes of paragraphs (2) and (3) above shall be taken to include the estimated value at the relevant time of those goods.

(7) The relevant time for the purposes of paragraphs (1) and (6) above means, in relation to a public works 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.

(8) A contracting authority shall not enter into separate public works contracts with the intention of avoiding the application of these Regulations to those contracts.