
STATUTORY INSTRUMENTS

1993 No. 3228

PUBLIC PROCUREMENT

The Public Services Contracts Regulations 1993

<i>Made</i>	- - - -	<i>22nd December</i> <i>1993</i>
<i>Laid before Parliament</i>		<i>22nd December</i> <i>1993</i>
<i>Coming into force</i>	- -	<i>13th January 1994</i>

The Treasury, being the Minister designated(1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to public procurement, in exercise of the powers conferred on 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 Services Contracts Regulations 1993 and shall come into force on 13th January 1994.

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 to negotiate the contract, the proposed conditions of contract, the specifications or descriptions of the services required by the contracting authority and all documents supplementary thereto;

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

(1) S. I. 1991/755.
(2) 1972 c. 68.

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

“design contest” means a competition particularly in the fields of planning, architecture, civil engineering and data processing—

- (a) which is conducted by a contracting authority and in which it invites the entry of plans and designs;
- (b) under the rules of which the plans or designs will be judged by a jury;
- (c) under which prizes may or may not be awarded; and
- (d) which enables the contracting authority to acquire the use or ownership of plans or designs selected by the jury;

“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;

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

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 9;

“public services contract” means a contract in writing for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services but does not include—

- (a) a contract of employment or other contract of services;
- (b) a public works contract within the meaning of the Public Works Contracts Regulations 1991(4);
- (c) a public supply contract within the meaning of the Public Supply Contracts Regulations 1991(5);
- (d) any contract where the contracting authority is a utility within the meaning of regulation 3 of the Utilities Supply and Works Contracts Regulations 1992(6) and the services are to

(3) OJ No. L379, 30.12.78, p.1, as amended by Council Regulation (EC) No. 2626/84 (OJ No. L247, 16.9.84, p.1) and Council Regulation EEC No. 1971/89 (OJ No. L189, 4.7.89, p.1).

(4) S. I. 1991/2680 as amended by S. I. 1992/2379.

(5) S. I. 1991/2679 as amended by S. I. 1992/3279.

(6) S. I. 1992/3279 as amended by S. I. 1993/3227.

be provided under it for the purposes of carrying out an activity specified in the Part of Schedule 1 of those Regulations in which the utility is specified; or

- (e) a contract under which a contracting authority engages a person to provide services to the public lying within its responsibility and under which the consideration given by the contracting authority consists of or includes the right to exploit the provision of the services.

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

“services provider” 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(7); and

“year” means a calendar year.

(2) For the purposes of these regulations—

- (a) “a part A services contract” is a contract under which services specified in Part A of Schedule 1 are to be provided;
- (b) “a Part B services contract” is a contract under which services in Part B of Schedule 1 are to be provided,

and, where services specified in both Parts A and B are to be provided under a single contract, then—

- (i) the contract shall be treated as a Part A services contract if the value of the consideration attributable to the services specified in Part A is greater than that attributable to those specified in Part B; and
- (ii) the contract shall be treated as a Part B services contract if the value of the consideration attributable to the services specified in Part B is equal to or greater than that attributable to those specified in Part A.

(3) The value in the currency of any member State of any amount expressed in these Regulations in ECU shall be determined by reference to the rate for the time being applying for the purposes of Council Directive 92/50/EEC(8) as published from time to time in the Official Journal(9).

(4) 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.

(5) 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,

(7) 1971 c. 80.

(8) OJ No. L209, 24.7.92, p.1.

(9) The rates are determined for each successive period of two years by calculating the average of the daily exchange rates between each currently and the ECU in a period of 24 months preceding the determination.

- (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⁽¹⁰⁾,
- (h) the Fire Authority for Northern Ireland,
- (i) a police authority constituted under section 2 of the Police Act 1964⁽¹¹⁾ 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⁽¹²⁾,
- (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⁽¹³⁾,
- (q) a joint education board constituted under the provisions of Part I of the First Schedule to the Education Act 1944⁽¹⁴⁾
- (r) a corporation established, or a group of individuals appointed to act together, for the specific purposes 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 these individuals, being appointed by another contracting authority, and
- (s) an association 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—

- (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⁽¹⁵⁾.

(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⁽¹⁶⁾.

⁽¹⁰⁾ 1947 c. 41.

⁽¹¹⁾ 1964 c. 48.

⁽¹²⁾ 1985 c. 51.

⁽¹³⁾ 1972 c. 70.

⁽¹⁴⁾ 1944 c. 31.

⁽¹⁵⁾ 1973 c. 65.

⁽¹⁶⁾ 1972 c. 9 (N. I.).

(5) Where an entry 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.

Services providers

4.—(1) For the purposes of these Regulations, a “services provider” means a person—

- (a) who sought, or who seeks, or who would have wished,
 - (i) to be the person to whom a public services contract is awarded, or
 - (ii) to participate in a design contest, 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.—(1) Whenever a contracting authority seeks offers in relation to a proposed Part A services contract other than one excluded by virtue of regulation 6 or 7, these Regulations apply in their entirety.

(2) Whenever a contracting authority seeks offers in relation to a proposed Part B services contract other than one excluded by virtue of regulation 6 or 7, Part I(General) and Part VII(Applications to the court) apply but only the following provisions in pArts II to VI apply—

- regulation 8 (Technical specifications in contract documents)
- regulation 22 (Contract award notices)
- regulation 27(2) (Statistical and other reports)
- regulation 28 (Responsibility for obtaining reports)
- regulation 29 (Publication of notices)

General exclusions

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

- (a) for the acquisition of land, including buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- (b) for the acquisition, development, production or co-production of programme material for radio or television by a broadcaster or for the purchase of broadcasting time;
- (c) for voice telephony, telex, radiotelephony, paging or satellite services;
- (d) for arbitration or conciliation services;
- (e) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments;
- (f) for central banking services;
- (g) for research and development services unless—
 - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and
 - (ii) the services are to be wholly paid for by the contracting authority;
- (h) to which the provisions of Article 223 of the EEC Treaty apply;

- (i) which is classified as secret or where the carrying out of the services 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;
- (j) 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 provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement;
 - (ii) pursuant to an interantional 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; or
- (k) under which services are to be provided by another contracting authority, or by a person which is a contracting authority in another member State for the purposes of Council Directive 92/50/EEC(17), because that contracting authority or person has an exclusive right—
 - (i) to provide the services, or
 - (ii) which is necessary for the provision of the services,pursuant to any published law, regulation or administrative provision, which is compatible with the EEC Treaty.

Thresholds

7.—(1) These Regulations shall not apply to the seeking of offers in relation to a proposed public services contract where the estimated value of the contract (net of value added tax) at the relevant time is less than 200,000 ECU.

(2) Subject to paragraphs (3) to (11) below, the estimated value for the purposes of paragraph (1) above of a public services contract shall be the value of the consideration which the contracting authority expects to give under the contract.

(3) In determining the value of the consideration which the contracting authority expects to give under a public services contract it shall, where appropriate, take account of—

- (a) the premium payable for insurance services,
- (b) the fees, commissions or other remuneration payable for banking and financial services, and
- (c) the fees or commissions payable for design services.

(4) Subject to paragraphs (5) and (8) below, where a contracting authority has a single requirement for services and a number of public services contracts have been entered or are to be entered into to fulfil that requirement the estimated value for the purposes of paragraph (1) above of each public services contract shall be the aggregate of the value of the consideration which the contracting authority expects to give under each of those contracts.

(5) Paragraph (4) above shall not apply to any public services 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 80,000 ECU and the aggregate value of that contract and of any other contract in respect of which the contracting authority takes

(17) OJ No. L209, 24.7.92, p. 1.

advantage of the disapplication of paragraph (4) 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 given or expects to give under all the contracts entered or to be entered into to fulfil the requirement.

(6) Subject to paragraph (8) below, where a contracting authority has a requirement over a period for services of the type to be provided under the public services contract and for that purpose enters into—

- (a) a series of contracts, or
- (b) a contract which under its terms is renewable,

the estimated value of the contract for the purposes of paragraph (1) above shall be the amount calculated under paragraph (7) below.

(7) The contracting authority shall calculate the amount referred to in paragraph (6) above either—

- (a) by taking the aggregate of the value of the consideration given by the contracting authority under public services contracts which have similar characteristics and which were for the provision of services of the type to be provided under the contract, during its last financial year ending before, or during the period of 12 months ending immediately before, the relevant time and by adjusting that amount to take account of any expected changes in the quantity and cost of the services 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 which have similar characteristics and which are for the provision of services of the type to be provided under the contract during the period of 12 months from the first date on which the services will be performed or, where the contract is for a definite term of more than 12 months, during the term of the contract.

(8) Notwithstanding paragraphs (4) and (6) above, when the services to be provided under the contract are required for the sole purposes of a discrete operational unit within the organisation of the contracting authority and—

- (a) the decision whether to enter the contract has been devolved to such a unit, and
- (b) that decision is taken independently of any other part of the contracting authority,

the valuation methods described in paragraphs (4) and (7) 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, under contracts for the provision of services which were or are required for the sole purposes of that unit.

(9) The estimated value for the purposes of paragraph (1) above of a public services contract under which services are to be provided over a period exceeding 4 years or over an indefinite period shall be the value of the consideration which the contracting authority expects to give in respect of each month of the period multiplied by 48.

(10) Where a public services contract includes one or more options the estimated value of the contract for the purposes of paragraph (1) above shall be determined by calculating the highest possible consideration which could be given under the contract.

(11) A contracting authority shall not enter into separate public services contracts nor select nor exercise a choice under a valuation method in accordance with paragraph (7) above with the intention of avoiding the application of these Regulations to those contracts.

(12) The relevant time for the purposes of paragraphs (1) and (7)(a) above means 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.

PART II

TECHNICAL SPECIFICATIONS

Technical specifications in 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;

“essential requirements” means requirements relating to safety, health and certain other aspects in the general interest which the services must meet;

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

“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, or by the European Telecommunications Standards Institute (“ETSI”) as a “European Telecommunications Standard” (“ETSI”) as a “European Telecommunications Standard” (“ETS”);

“European technical approval” means an approval of the fitness for use of a product, issued by an approval body designated for the purpose by a member State, following a technical assessment of whether the product fulfils the essential requirements for building works, having regard to the inherent characteristics of the product and the defined conditions of application and use;

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

“technical specifications” means the technical requirements defining the characteristics required of the work or works and of the materials and goods used in or for it or them (such as quality, performance, safety or dimensions) so that the works, work, materials and goods are described objectively in a manner which will ensure that they fulfil the use for which they are intended by the contracting authority. In relation to materials and goods, “technical specifications” include requirements in respect of quality assurance, terminology, symbols, tests and testing methods, packaging, marking and labelling. In relation to a work or works, they include requirements relating to design and costing, the testing, inspection and acceptance of a work or works, and the methods or techniques of construction.

(2) If a contracting authority wishes to lay down technical specifications which the services to be provided under a public services contract and which the materials and goods used in or for it 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 services 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 services to be provided under the contract or for the materials or goods to be used in or for it (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 services or the material or goods do conform to, the relevant European specifications;
- (c) definition by reference to European specifications would conflict with the application of—
 - (i) Council Directive [86/361/EEC](#) on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment(**18**),
 - (ii) Council Decision [87/95/EEC](#) on standardisation in the field of information technology and telecommunications(**19**), or
 - (iii) other Community instruments relating to specific types of services, material or goods;
- (d) subject to paragraph (5) below, application of the relevant European specifications would oblige the contracting authority to use material or goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties; or
- (e) the project 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 state in the contract notice which of the circumstances specified in paragraph (4)(b) to (e) above was the ground for defining the technical specifications other than by reference to European specifications or, if it is impossible to include this information in the contract notice or it is a proposed Part B services contract, the contracting authority shall specify it in the contract documents 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 services to be provided under a public services contract or to the materials or goods to be used in or for it, the technical specifications in the contract documents—

- (a) shall be defined by reference to the British technical specifications recognised as complying with the basic requirements specified in any Council Directive on technical harmonisation in accordance with the procedures laid down in those directives and, in particular, in accordance with the procedures laid down in Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative procedures in the member States relating to construction products(**20**);
- (b) may be defined by reference to British technical specifications relating to design and method of calculation and execution of a work or works and use of materials and goods;
- (c) 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)—
 - (i) British standards implementing international standards;
 - (ii) other British standards and technical approvals; or
 - (iii) any other standards

(18) OJ No. L217, 5.8.86, p. 21, as amended by Council Directive [91/263/EEC](#) (OJ No. L128, 23.5.91, p.1).

(19) OJ No. L36, 7.2.87, p. 31.

(20) OJ No. L40, 11.2.89, p.12.

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

(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 paragraph (8) or (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 subject of the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all services providers, provided that the references are accompanied by the words “or equivalent”.

PART III

PROCEDURES LEADING TO THE AWARD OF A PUBLIC SERVICES CONTRACT

Prior information notices

9.—(1) Subject to paragraph (2) below, a 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 2 and containing the information therein specified, in respect of the public services contracts in relation to which it expects to seek offers leading to an award during that financial year and the notice shall be subdivided to give that information separately for each category of services specified in Part A of Schedule 1.

- (2) The obligation under paragraph (1) above shall only apply—
- (a) to proposed Part A services contracts which are not excluded from the application of these Regulations by virtue of regulation 6 or 7; and
 - (b) where, at the date of despatch of the notice, the total considerations which the contracting authority expects to give under all the proposed public services contracts for the provision of services falling within the same category specified in Part A of Schedule 1, equals or exceeds 750,000 ECU.

Selection of contract award procedure

10.—(1) For the purposes of seeking offers in relation to a proposed public services 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 negotiated procedure in the following circumstances—
- (a) subject to paragraph (3) below, in the event that the procedure leading to the award of a 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(8) 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 services provider 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 services, materials or goods offered do not meet the technical specifications (within the meaning of regulation 8(1) above) of the contracting authority;

- (b) exceptionally, when the nature of the services to be provided, or the risks attaching thereto, are such as not to permit prior overall pricing;
- (c) when the nature of the services to be provided, in particular in the case of intellectual services or services specified in category 6 of Part A of Schedule 1, is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure;
- (d) subject to paragraph (3) below, in the absence of tenders or of appropriate tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;
- (e) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services to be provided may only be provided by a particular person;
- (f) when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;
- (g) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedure is used, or the time limits specified in regulation 13 if the negotiated procedure is used pursuant to paragraph (2)(a) to (c) above, cannot be met;
- (h) subject to paragraph (4) below, when a contracting authority wants a person who has entered into a public services contract with the contracting authority to provide additional services which were not included in the project initially considered or in the original services contract but which through unforeseen circumstances have become necessary, and—
 - (i) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the contracting authority, or
 - (ii) such services can be provided separately from the services provided under the original contract but are strictly necessary to the performance of that contract; and
- (i) subject to paragraph (5) below, when a contracting authority wishes a person who has entered into a public services contract with it to provide new services which are a repetition of services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

(3) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(a) or (d) 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.

(4) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(h) above where the aggregate value of the consideration to be given under contracts for the additional services exceeds 50 per cent of the value of the consideration payable under the original contract; and, for the purposes of this paragraph, the value of the consideration shall be taken to include the estimated value of any goods which the contracting authority provided to the person awarded the contract for the purpose of carrying out the contract.

(5) A contracting authority shall not use the negotiated procedure pursuant to paragraph (2)(i) above unless the contract notice relating to the original contract stated that a services contract for new services which would be a repetition of the services provided under the original contract may be awarded using the negotiated procedure pursuant to paragraph (2)(i) above and unless the procedure for the award of the new contract is commenced within three years of the original contract being entered into.

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

(7) A contracting authority using the negotiated procedure pursuant to paragraph (2)(d) above shall, if the Commission requests it, submit a report recording the fact that it has done so 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 services 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 2, inviting tenders and containing the information therein specified.

(3) Subject to paragraph (4) 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 contract notice shall be specified in the contract notice and shall be not less than 52 days from the date of despatch of the notice.

(4) Where the contracting authority has published a notice in accordance with regulation 9 above in relation to the category of services to be provided under the public services contract it may substitute for the period of not less than 52 days specified in paragraph (3) above a period of not less than 36 days.

(5) The contracting authority shall send the contract documents within 6 days of the receipt of a request from any services provider provided that the documents are requested in good time and any fee specified in the contract notice has accompanied the request.

(6) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a service provider 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.

(7) If the contract documents are too bulky to be supplied within the periods referred to in paragraphs (5) or (6) above or it is necessary that services providers be given the opportunity to inspect the site in relation to which the services are to be provided or documents relating to the contract documents, then the minimum periods referred to in paragraphs (3) and (4) above shall be extended to allow for such supply or inspection.

(8) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 21 only if the services provider may be treated as ineligible to tender on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers 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 services 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 2, inviting requests to be selected to tender and containing the information therein specified.

(3) Subject to paragraph (15) 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 not be less than 37 days from the date of the despatch of the notice.

(4) The contracting authority may exclude a services provider from those persons from whom it will make the selection of persons to be invited to tender only if the services provider may be treated as ineligible on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers 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 services providers 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 services providers on the grounds of their nationality or the member State in which they are established.

(6) The contracting authority may predetermine the range within which the number of persons which it intends to invite to tender for the contract shall be fixed but only if—

- (a) the lower number of the range is not less than 5 and the higher number not more than 20,
- (b) the range is determined in the light of the nature of the services to be provided under the contract, and
- (c) the range is specified in the contract notice.

(7) The number of persons invited to tender shall be sufficient to ensure genuine competition.

(8) The contracting authority shall send invitations to each of the services providers selected to tender and the invitation shall be accompanied by the contract documents, or the invitation shall state the address for requesting them.

(9) The invitation shall be sent in writing simultaneously to each services provider selected to tender.

(10) The following information shall be included in the invitation—

- (a) the address to which requests for the contract documents (if not accompanying the invitation) and further information relating to those documents should be sent, the final date for making such a request and the amount and terms of the fee which may be charged for supplying that material;
- (b) the final date for the receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to the contract notice published in accordance with paragraph (2) above;
- (d) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with regulations 15, 16 and 17; and
- (e) the criteria for the award of the contract if this information was not specified in the contract notice published in accordance with paragraph (2) above.

(11) Subject to paragraphs (12) and (15) 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 which shall be specified in the invitation to tender in accordance with paragraph (10)(b) above shall not be less than 40 days from the date of the despatch of the invitation.

(12) Subject to paragraph (15) below, where the contracting authority has published a notice in accordance with regulation 9 above in relation to the category of services to be provided under the

public services contract, it may substitute for the period of not less than 40 days in paragraph (11) above a period of not less than 26 days.

(13) If it is necessary that services providers should be given the opportunity to inspect the site in relation to which the services under the contract are to be provided or documents relating to the contract documents, then the minimum periods referred to in paragraphs (11) and (12) above shall be extended to allow for such inspection.

(14) Subject to paragraph (15) below, the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a services provider 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.

(15) Where compliance with the minimum periods referred to in paragraphs (3), (11), (12) and (14) above is rendered impracticable for reasons of urgency, the contracting authority may substitute for the period specified in paragraph (d) a period of not less than 15 days and for the period specified in paragraphs (11) and (12) periods of not less than 10 days and for the period specified in paragraph (14) a period of not less than 4 days and, in those circumstances, the contracting authority must send the invitation to tender by the most rapid means possible.

(16) A contracting authority shall not refuse to consider an application to be invited to tender for a contract if it is made by letter, telegram, telex, facsimile or telephone provided that, in the last 4 cases, it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of applications to be invited to tender for the contract.

The negotiated procedure

13.—(1) A contracting authority using the negotiated procedure shall comply with the following provisions of this regulation except that—

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(d) to (i), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(a) who invites to negotiate the contract every services provider 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(8) or 12(4)),

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

(2) The contracting authority shall publicise its intention to seek offers in relation to the 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 2, inviting requests to be selected to negotiate and containing the information therein specified.

(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 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) Where there is a sufficient number of persons who are suitable to be selected to negotiate the contract, the number selected to negotiate the contract shall not be less than 3.

(6) A contracting authority shall not refuse to consider an application to be selected to negotiate if it is made by letter, telegram, telex, facsimile or by telephone provided that, in the last 4 cases, it is

confirmed by letter before the date fixed by the contracting authority as the last date for the receipt of requests to be selected to negotiate.

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

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

PART IV

SELECTION OF SERVICES PROVIDERS

Criteria for rejection of services providers

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

- (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⁽²¹⁾, or article 242 of the Insolvency (Northern Ireland) Order 1989⁽²²⁾, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented 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 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;

(21) 1986 c. 45.

(22) S. I. 1989/2405 (N.I.19).

- (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 services provider is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom;
- (h) is guilty of serious misrepresentation in providing any information required of him under this regulation and regulations 15, 16 and 17;
- (i) is not licensed in the member State in which he is established or is not a member of an organisation in that member State when the law of that member State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member; or
- (j) subject to paragraphs (5) and (6) below, is not registered on the professional or trade register of the member State in which he is established under conditions laid down by that State.

(2) Subject to regulation 18, the contracting authority may require a services provider 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 services provider does not fall within the grounds specified in paragraph (1)(a), (b), (c), (d), (f) or (g) above if that services provider provides to the contracting authority—

- (a) in relation to the grounds specified in paragraph (1)(a), (b), (c), (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; and
- (c) in a member State where the documentary evidence specified in paragraphs (2)(a) and (b) above is not issued in relation to one of the grounds specified in paragraph (1)(a), (b), (c), (d), (f) or (g) above, a declaration on oath made by the services provider before the relevant judicial, administrative or competent authority or a relevant notary public or commissioner for oaths.

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

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

- in Belgium the registre du commerce/Handelsregister or the ordres professionnels – Beroepsorden;
- in Denmark, the Erhvervs- and Selskabstyrelsen;
- in France, the registre du commerce or the répertoire des métiers;
- in Germany, the Handelsregister, the Handwerksrolle or the Vereinsregister;
- in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato, the Registro delle commissioni provinciali per l'artigianato or the Consiglio nazionale degli ordini professionali;
- in Luxembourg, the registre aux firmes and the rôle de la Chambre des métiers;
- in the Netherlands, the Handelsregister;
- in Portugal, the Registo nacional das Pessoas Colectivas; and

in Spain, the Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda.

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

(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 services provider established in Greece shall be treated as registered on the professional or trade register for the purposes of paragraph (1)(j) above—

(a) when the services to be provided under the contract are specified in paragraph 8 of Schedule 1 and when Greek legislation requires persons who provide those services to be registered on the professional register “Μητρωο Μελετητων” and “Μητρωο Γραφειων Μελετων”, if he is registered on that register; and

(b) in any other case, if the services provider is certified as having declared on oath before a notary public that he exercises the profession which will be exercised in providing the services under the contract.

Information as to economic and financial standing

15.—(1) Subject to regulation 18 and paragraph (2) below, in assessing whether a services provider meets any minimum standards of economic and financial standing required of services providers by the contracting authority for the purposes of regulations 11(8), 12(4) and 13(7), and in selecting the services providers 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 services provider to provide such of the information as it considers it needs to make the assessment or selection)—

(a) appropriate statements from the services provider’s bankers, or evidence of relevant professional risk indemnity insurance;

(b) statement of accounts or extracts therefrom relating to the business of the services provider where publication of the statement is required under the law of the member State in which the services provider is established;

(c) a statement of the overall turnover of the business of the services provider and the turnover in respect of the provision of services of the type to be provided under the proposed services contract in the 3 previous financial years of the services provider.

(2) Where the information specified in paragraph (1) above is not appropriate in a particular case a contracting authority may require a services provider to provide other information to demonstrate the services provider’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 services provider must provide.

(4) Where a services provider 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 services provider as the contracting authority considers appropriate.

Information as to ability and technical capacity

16.—(1) Subject to regulation 18, in assessing whether or not a services provider meets any minimum standards of ability and technical capacity required of services providers by the contracting authority for the purposes of regulations 11(8), 12(4) and 13(7), and in selecting the services providers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority may have regard to—

- (a) the services provider's ability, taking into account in particular his skills, efficiency, experience and reliability; and
- (b) his technical capacity, taking into account any of the following—
 - (i) the services provider's educational and professional qualifications where the services provider is an individual and the qualifications of the services provider's managerial staff if any and those of the person or persons who would be responsible for providing the services under the contract;
 - (ii) the principal services provided by the services provider of a similar type to the services to be provided under the contract in the past 3 years, the dates on which the services were provided, the consideration received and the identity of the person to whom the services were provided, any certificate issued or countersigned by that person confirming the details of the services provided or, but only where that person was not a contracting authority, any declaration by the services provider attesting the details of the services provided;
 - (iii) the technicians or technical bodies who would be involved in the provision of the services under the contract, particularly those responsible for quality control whether or not they are independent of the services provider;
 - (iv) the services provider's average annual manpower and the number of managerial staff over the previous 3 years;
 - (v) the tools, plant and technical equipment available to the services provider for providing the services under the contract;
 - (vi) the services provider's measures for ensuring quality and his study and research facilities in relation to the services to be provided under the contract;
 - (vii) where the services to be provided under the contract are complex or are required for a special purpose, any check, carried out by the contracting authority or on its behalf by a competent official body of the member State in which the services provider is established, on the technical capacity of the services provider in relation to the services to be provided under the contract and, if relevant, on the services provider's study and research facilities and quality control measures;
 - (viii) any certificate that the services of the services provider to be provided under the contract conform to BS 5750 or any certificate of an independent body established in any member State conforming to the EN 45 000 European standards series attesting conformity to relevant quality assurance standards based on the EN 29 000 series, or where the services provider has no access to such a certificate, or cannot obtain such a certificate within the relevant time limits, any other evidence of conformity to equivalent quality assurance standards;
 - (ix) any proportion of the contract which the services provider intends to sub-contract to another person.

(2) The contracting authority shall specify in the contract notice or in the invitation to tender or to negotiate what information, for the purposes of making the assessment or selection for the purposes of paragraph (1) above, it requires to be provided and it may require a services provider to provide such of that information as it considers it needs to make the assessment or selection.

Supplementary information

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

Official lists of recognised services providers

18. Where a services provider is registered on the official list of recognised services providers in a member State which maintains such lists and in which the services provider submits to the contracting authority a certificate of registration issued by the authority administering the official lists which specifies the information submitted to that authority which enabled the services provider to be registered and which states the classification given, the contracting authority, to the extent that the certificate deals with the grounds referred to in regulations 14(1)(a) to (e) and (h) to (j), 15(1)(b) and (c) and 16(1)(b)(i)—

- (a) shall accept the certificate as evidence that the services provider does not fall within the grounds specified in regulation 14(1)(a) to (e) and (h) to (j) and shall not be entitled to require the services provider to submit such information relating to those grounds as is specified in regulation 14,
- (b) shall not be entitled to require the services provider to provide information specified in regulations (15)(1)(b) and (c) and 16(1)(b)(i), and
- (c) shall not be entitled to seek any supplementary information in accordance with regulation 17 above in relation to the matters specified in paragraphs (a) and (b) above.

Consortia

19.—(1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a services provider, acting jointly for the purpose of being awarded a public services 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 to be invited to tender for or to negotiate a public services contract on the grounds that the consortium has not formed a legal entity for the purposes of tendering for or negotiating the contract; but where a contracting authority awards a public services contract to a consortium it may 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 services provider where the services provider is a consortium includes a reference to each person who is a member of that consortium.

Corporations

20.—(1) A contracting authority shall not treat the tender of a services provider as ineligible nor decide not to include a services provider amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a contract on the ground that under the law of any part of the United Kingdom the services provider is required to be an individual, a corporation or other type of body, if under the law of the member State in which the services provider is established, he is authorised to provide such services.

(2) A contracting authority may require a services provider which is not an individual to indicate in the tender or in the request to be selected to tender for or to negotiate the public services contract the names and relevant professional qualifications of the staff who will be responsible for the provision of the services.

PART V

THE AWARD OF A PUBLIC SERVICES CONTRACT

Criteria for the award of a public services contract

21.—(1) Subject to paragraphs (5), (6) and (7) below, a contracting authority shall award a public services contract on the basis of the offer which—

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

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

(3) Where a contracting authority intends to award a public services 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) Where a contracting authority awards a public services contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if—

- (a) the offer meets the minimum requirements on the contracting authority, and
- (b) it has stated those minimum requirements and any specific requirements for the presentation of an offer offering variations in the contract documents,

but if the contracting authority will not take account of offers which offer such variations it shall state that fact in the contract notice.

(5) A contracting authority may not reject an offer which offers variations on the requirements specified in the contract documents on the ground that it would lead to the award of a public supply contract within the meaning of the Public Supply Contracts Regulations 1991(23).

(6) A contracting authority may not reject an offer on the ground that the technical specifications in the offer have been defined by reference to European specifications (within the meaning of regulation 8(1)) or to the national technical specifications specified in regulation 8(7)(a) and (b).

(7) If an offer for a public services contract is abnormally low the contracting authority may reject that offer but only if it has requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low and has—

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

and, in considering that explanation, the contracting authority may take into account explanations which justify the offer on objective grounds including the economy of the method of providing the services, the technical solutions suggested by the services provider or the exceptionally favourable conditions available to the services provider for the provision of the services or the originality of the services proposed by the services provider.

(8) If a contracting authority which rejects an abnormally low offer is awarding the public services 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.

(9) For the purposes of this regulation “offer” includes a bid by one part of a contracting authority to provide services to another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice

22.—(1) A contracting authority which has awarded a Part A or Part B services 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 2 and, subject to paragraph (2) below, including the information therein specified.

(2) Any of the information specified in Part E of Schedule 2 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 interest of any person or might prejudice fair competition between services providers.

(3) A contracting authority which has awarded a Part B services contract shall state in the contract award notice whether or not it agrees to its publication.

Information about contract award procedures

23.—(1) A contracting authority shall, within 15 days of the date on which it receives a written request from any services provider who was unsuccessful (whether pursuant to regulation 11(8), 12(4), 12(5), 13(7), 13(8) or (21), inform that services provider of the reasons why he was unsuccessful and, if the services provider was unsuccessful as a result of the evaluation of offers made in accordance with regulation 21, the name of the person awarded the public services contract.

(2) A contracting authority shall prepare a record in relation to each public services contract awarded by it specifying—

- (a) the name and address of the contracting authority;
- (b) the services to be provided under the public services contract and the value of the consideration to be given under it;
- (c) the names of the persons whose offers were evaluated in accordance with regulation 21 and, where the contracting authority has used the restricted or negotiated procedure, the reasons for their selection;
- (d) the names of the persons who were unsuccessful pursuant to regulation 11(8), 12(4), 12(5), 13(7) or 13(8) and the reasons why they were not successful;
- (e) the name of the person to whom the public services contract was awarded and the reasons for having awarded the contract to him;
- (f) if known to the contracting authority, the services under the public services contract which the person to whom the contract has been awarded intends to sub-contract to another person;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 10(2) constituted grounds for using that procedure.

(3) If the Treasury requests a report containing the information specified in paragraph (2) above in relation to public services contract, the contracting authority shall send a written report containing that information, or the main features of it, to the Treasury for onward transmission to the Commission.

(4) Where a contracting authority decides not to award a public services contract in respect of which a contract notice was published nor to seek offers in relation to another contract for the same purposes it shall inform the Official Journal of that decision and shall, if so requested in writing by any services provider who submitted an offer or who applied to be included amongst the persons to be selected to tender for or to negotiate the contract, inform him of the reasons for its decision.

PART VI

MISCELLANEOUS

Design contests

24.—(1) This regulation shall apply to a design contest—

- (a) if it is organised as part of a procedure leading to the award of a public services contract and the estimated value of any public services contract (calculated in accordance with regulation 7 above) which it is intended to award as the outcome of the contest is not less than 200,000 ECU, or
- (b) whether or not it is organised as part of a procedure leading to the award of such a contract, if the aggregate of the value of the prizes or payments for the contest is not less than 200,000 ECU.

(2) The contracting authority shall publicise its intention to hold a design contest by sending to the Official Journal a notice in a form substantially corresponding to that set out in Part F of Schedule 2 and containing the information therein specified.

(3) The contracting authority shall make the rules of the design contest available to services providers who wish to participate in the contest.

(4) The contracting authority may restrict the number of persons invited to participate in the design contest, but it shall make the selection on the basis of clear and non discriminatory criteria.

(5) The contracting authority shall take account of the need to ensure adequate competition in determining the number of persons invited to participate in the design contest.

(6) Regulation 20 applies to design contests as it applies to the seeking of offers in relation to a proposed public services contract.

(7) The contracting authority shall provide for the participants' proposals to be submitted to the jury without any indication as to the authorship of each proposal.

(8) The contracting authority shall ensure that the members of the jury are all individuals who are independent of participants in the design contest and, when the participants are required to possess a particular professional qualification, that at least one third of the members of the jury also possess that qualification or an equivalent qualification.

(9) The contracting authority shall ensure that the jury makes its decision independently and solely on the basis of the criteria set out in the notice referred to in paragraph (2) above.

(10) The contracting authority shall, no later than 48 days after the date the jury has made its selection, publicise the results of the design contest by sending to the Official Journal a notice substantially corresponding to the form set out in Part G of Schedule 2 and including the information therein specified.

Subsidised public services contracts

25.—(1) Where a contracting authority undertakes to contribute more than half of the consideration to be or expected to be paid under a public services contract to which this paragraph

applies by virtue of paragraph (2) below which has been or is to be entered into by a person other than a contracting authority (in this paragraph referred to as “the subsidised body”), that contracting authority shall—

- (a) make it a condition of the making of such contribution that the subsidised body complies with the provisions of these Regulations in relation to that public services contract as if it were a contracting authority, and
- (b) ensure that the subsidised body does so comply or recover the contribution.

(2) Paragraph (1) above applies to a contract which would be a public services contract if the subsidised body were a contracting authority and which is for the carrying out of services in connection with the carrying out of any of the activities specified in Schedule 1 of the Public Works Contracts Regulations 1991(24) as are included in Group 502 or for the carrying out of building work for hospitals, facilities intended for sports, recreation and leisure, school and university building or buildings for administrative purposes.

Obligations relating to employment protection and working conditions

26. A contracting authority which includes in the contract documents information as to where a services provider may obtain information about obligations relating to employment protection and working conditions which will apply to the services to be provided under the public services contract shall request services providers to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

Statistical and other reports

27.—(1) A contracting authority shall, no later than 31st July 1995 and 31st July in each alternate year thereafter, send to the Treasury a report specifying in relation to each public services contract awarded by it during the year preceding the year in which the report is made—

- (a) the value (estimated if necessary) of the consideration payable under the contract;
- (b) whether the open, restricted or negotiated procedure was used in awarding the contract;
- (c) if the negotiated procedure was used, pursuant to which provision of regulation 10(2) that procedure was used;
- (d) the services specified in Part A of Schedule 1 provided or to be provided under the contract; and
- (e) the nationality of the person to whom the contract was awarded.

(2) 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 services contract (including a public services contract excluded from the application of these Regulations by regulation 6 or 7 and a Part B services contract) for the purpose of informing the Commission.

Responsibility for obtaining reports

28.—(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), 21(8), 23(3) and 27 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;

(24) S. I. 1991/2680 as amended by S. I. 1992/3279.

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

29.—(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⁽²⁵⁾ and where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulation 12(15) or 13(4), the notice shall be sent by telex, telegram or telefax.

(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 contract which was not contained in the notice sent to the Official Journal.

(5) When a contracting authority is not required to send a contract notice to the Official Journal in respect of a particular services contract it may nevertheless send such a notice and request that it be published.

Confidentiality of information

30. A contracting authority shall comply with such requirements as to confidentiality of information provided to it by a services provider as the services provider may reasonably request.

Sub-contractors

31. A contracting authority may require a services provider to indicate in his tender what part of the public services contract he intends to sub-contract to another person.

(25) The address for the Office for Official Publications of the European Communities is 2 Rue Mercier, L-2985, Luxembourg (tel: 499 28-1; telex: 1324 PUBOF LU; fax: 49 00 03, 49 57 19).

PART VII

APPLICATIONS TO THE COURT

Enforcement of obligations

32.—(1) The obligation on a contracting authority to comply with the provisions of these Regulations other than regulations 8(6), 10(7), 21(8), 23(3) and 27, and with any enforceable Community obligation in respect of a public services contract (other than one excluded from the application of these Regulations by regulation 6 or 7), is a duty owed to services providers.

(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 services provider 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 services provider 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 the 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 the decision or action or order the contracting authority to amend any documents, or

(ii) award damages to a services provider who has suffered loss or damage as a consequence of the breach, or

(iii) do both of those things.

(6) In any 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 has been entered into.

(7) Notwithstanding sections 21 and 42 of the Crown Proceedings Act 1947⁽²⁶⁾, in proceedings brought under this regulation against the Crown the Court shall have power to grant an injunction or interdict.

⁽²⁶⁾ 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.

Amendment of the Public Supply Contracts Regulations

33. The Public Supply Contracts Regulations 1991⁽²⁷⁾ shall be amended—

- (a) in regulation 2(1) by omitting from the definition of “public supply contract” subparagraph (ii);
- (b) by deleting regulation 7(7).

22nd December 1993

Tim Wood
Irvine Patnick
Two of the Lords Commissioners of Her
Majesty’s Treasury.

⁽²⁷⁾ S. I. 1991/2679 as amended by S. I. 1992/3279.

SCHEDULE 1

Regulation 5

CATEGORIES OF SERVICES

PART A

Category	Services	CPC(28) Reference
1.	Maintenance and repair of vehicles and equipment	6112, 6122, 633, 886
2.	Transport by land, including armoured car services and courier services and courier services but not including transport of mail and transport by rail	721 (except 71235), 7512, 87304
3.	Transport by air but not transport of mail	73(except 7321)
4.	Transport of mail by land, other than by rail, and by air	71235, 7321
5.	Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite services	752
6.	Financial services (a) Insurance services (b) Banking & investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services	81 (Part) 812, 814
7.	Computer and related services	84
8.	R&D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority	85
9.	Accounting, auditing and book-keeping services	862

(28) CPC stands for the Central Product Classification of the United Nations.

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Category	Services	CPC(28) Reference
10.	Market research and public opinion polling services	864
11.	Management consultancy services and related services, but not arbitration and conciliation services	865, 866
12.	Architectural services: engineering services and integrated engineering services: urban planning and landscape architectural services: related scientific and technical consulting services: technical testing and analysis services	867
13.	Advertising services	871
14.	Building-cleaning services and property management services	874 82201 to 82206
15.	Publishing and printing services on a fee or contract basis	88442
16.	Sewerage and refuse disposal service: sanitation and similar services	94

PART B

Category	Services	CPC Reference
17.	Hotel and restaurant services	64
18.	Transport by rail	711
19.	Transport by water	72
20.	Supporting and auxiliary transport services	74
21.	Legal services	861
22.	Personnel placement and supply services	872
23.	Investigation and security services, other than armoured car services	873 (except 87304)
24.	Education and vocational education services	92

(28) CPC stands for the Central Product Classification of the United Nations.

Category	Services	CPC Reference
25.	Health and social services	93
26.	Recreational, cultural and sporting services	96
27.	Other services	

SCHEDULE 2

Regulations 9(1), 11(2), 12(2), 13(2),
22(1) and 24(2) and (10)

FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL JOURNAL

PART A

PRIOR INFORMATION NOTICES

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. For each category of services in Part A of Schedule 1, the total quantity in value to be provided.
3. For each category of services in (2), the 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, telex and facsimile numbers of the contracting authority.
2. Category of services and description. CPC reference number.
3. Place of delivery.
 - (a) Indication of whether the provision of the services is reserved by law, regulation or administrative provision to a particular profession;
 - (b) Reference to the law, regulation or administrative provision;
 - (c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
5. Indication of whether services providers can tender for some or all the services required.
6. Where applicable, prohibition on variants.
7. Period of contract or time-limit, if any, for completion.
 - (a) Name and address of the service from which the contract and additional documents may be requested;
 - (b) Final date for making such requests;

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- (c) Where applicable, the amount and terms of payment of any sum payable for such documents.
- (a) (a) Where applicable, the persons authorised to be present at the opening of tenders;
- (b) Date, time and place of opening.
- 10. Any deposits and guarantees required.
- 11. The main terms concerning financing and payment and/or references to the relevant provisions.
- 12. Where applicable, the legal form to be taken by the grouping of services providers to whom the contract is awarded.
- 13. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
- 14. Period during which the tenderer is bound to keep open his tender.
- 15. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
- 16. Other information
- 17. 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.
- 2. Category of services and description. CPC reference number.
- 3. Place of delivery.
 - (a) (a) Indication of whether the provision of the services is reserved by law, regulation or administrative provision to a particular profession;
 - (b) Reference to the law, regulation or administrative position;
 - (c) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
- 5. Indication of whether the services provider can tender for all or part of the services required.
- 6. If known, the number of services providers which will be invited to tender or the range within which that number is expected to fall.
- 7. Where applicable, prohibition on variants.
- 8. Period of contract or time limit, if any, for completion of the services.
- 9. Where applicable, the legal form to be assumed by the grouping of services providers to whom the contract is awarded.
 - (a) (a) Where applicable, justification for the use of shorter time limits⁽²⁹⁾;
 - (b) Final date for the receipt of requests to participate;
 - (c) Address to which they must be drawn up.

⁽²⁹⁾ In accordance with regulation 12.

- (d) Language(s) in which they must be drawn up.
- 11. Final date for the despatch of invitations to tender.
- 12. Any deposits and guarantees required.
- 13. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
- 14. Criteria for the award of the contract. Criteria other than that of lowest price shall be mentioned where these do not appear in the contract documents.
- 15. Other information.
- 16. Date of despatch of the notice.

PART D

NEGOTIATED PROCEDURE NOTICE

- 1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
- 2. Category of services and description. CPC reference number.
- 3. Place of delivery.
 - (a) (a) Indication of whether the provision of the services is reserved by law, regulation or administrative provision to a particular profession;
 - (b) Reference to the law, regulation or administrative provision;
 - (c) Indication of whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
- 5. Indication of whether services providers can offer some or all of the services required.
- 6. If known, the number of services providers which will be invited to tender or the range within which that number is expected to fall.
- 7. Where applicable, non-acceptance of variants.
- 8. Period of contract or time-limit, if any, for completion of the services.
- 9. Where applicable, the legal form to be assumed by a grouping of services providers to whom the contract is awarded.
 - (a) (a) Where applicable, justification for use of the shorter time limits(30);
 - (b) Final date for the receipt of requests to participate;
 - (c) Address to which they must be sent;
 - (d) Language(s) in which they must be drawn up.
- 11. Any deposits and guarantees required.
- 12. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
- 13. Where applicable, the names and addresses of services providers already selected by the contracting authority.

(30) In accordance with regulation 12.

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14. Other information.
15. Date of despatch of the notice.
16. Date(s) of previous publications in the Official Journal of the European Communities.

PART E

CONTRACT AWARD NOTICE

1. Name and address of contracting authority.
 - (a) (a) Award procedure chosen;
 - (b) Where applicable, justification for the use of the negotiated procedure⁽³¹⁾.
3. Category of services and description. CPC reference number.
4. Date of award of contract.
5. Criteria for award of contract.
6. Number of offers received.
7. Name(s) and address(es) of services provider(s).
8. Price or range of prices paid or to paid.
9. Where appropriate, value and proportion of the contract which may be sub-contracted to third parties.
10. Other information.
11. Date of publication of the contract notice in the Official Journal of the European Communities.
12. Date of despatch of the notice.
13. In the case of contracts for services specified in Part B of Schedule 1, agreement by the contracting authority to publication of the notice.

PART F

DESIGN CONTEST NOTICE

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. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of plans and designs.
5. In the case of restricted contests:
 - (a) the number of participants envisaged;
 - (b) where applicable, names of the participants already selected;
 - (c) criteria for the selection of participants;
 - (d) final date for receipt of requests to participate.

⁽³¹⁾ In accordance with regulation 10.

6. Where applicable, an indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the persons selected to be members of the jury.
9. Indication of whether the decision of the jury is binding on the contracting authority.
10. Where applicable, number and value of the prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether follow-up contracts will be awarded to one of the winners.
13. Other information.
14. Date of despatch of the notice.

PART G

DESIGN CONTEST RESULT NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
2. Project description.
3. Number of participants.
4. Number of participants established outside the United Kingdom.
5. Winner(s) of the contest.
6. Where applicable, the prize(s) awarded.
7. Other information.
8. Reference to publication of the design contest notice in the Official Journal of the European Communities.
9. Date of despatch of the notice.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in its entirety Council Directive [92/50/EEC](#) (OJ No.L209, 24.7.92,p.1) relating to the coordination of procedures for the award of public services contracts.

The Regulations apply to certain public bodies called in the Regulations “contracting authorities” (regulation 3) when they are seeking offers in relations to certain contracts for the provision of services (called in the Regulations “public service contracts”) (regulation 2(1)). The Regulations do not apply to some services contracts (regulations 2(1) and 6), nor to those contracts where the value is beneath the threshold for coverage (regulation 7). They deal in particular with the

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treatment to be accorded to services providers or potential services providers who are nationals of and established in member States (regulation 4).

The categories of services are specified in Schedule 1: the Regulations apply in their entirety to public services contracts for services specified in Part A of Schedule 1 (“Part A services contracts”); only certain provisions apply to those services specified in Part B of that Schedule (“Part B services contracts”) (regulation 5).

With respect to Part A services contracts the principal requirement of the Regulations is that, in seeking offers in relation to such a 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 public services contract with one or more persons selected by it. 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 Part A services contracts in the Official Journal of the European Communities although this requirement is dispensed with in some 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 2. 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 29). The various procedures also lay down the time to be allowed for the response by potential services providers to the invitations and for obtaining the relevant documents (regulations 11, 12 and 13). The Regulations also specify the matters to which the contracting authority may have regard in treating services providers as ineligible to tender for or negotiate the contract (regulation 14). Detailed rules for the selection of services providers are laid down and relate to their business and professional status, their economic and financial standing, ability and technical capacity. The contracting authority is restricted in the information on which it may rely to demonstrate these matters (regulations 15 and 16).

The contracting authority is required to award Part A services contracts 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 21). If requested by an unsuccessful services provider the contracting authority must provide reasons as to why that services provider was unsuccessful (regulation 23).

There are various other requirements in the Regulations. The most important is the requirement (applying to both Part A and Part B services contracts) that where the contracting authority wishes to lay down technical specifications which the services to be provided under the contract and which the materials and goods used in or for it 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. This includes a British Standard which implements a European standard or European technical approval. It is also provided that, except where it is not possible to describe the goods or materials otherwise, the technical specifications may not refer to goods or materials of a specific make or source or a particular process which have the effect of favouring or eliminating certain services providers (regulation 8). Contracting authorities are required to publicise in the Official Journal at the beginning of their financial year certain Part A services contracts which they expect to award during the course of that year (regulation 9). Contracting authorities are also required to publicise in the Official Journal information about both Part A and B services contracts which they have awarded (regulation 22). Contracting authorities are required to submit various reports in respect of each Part A services contract awarded by it, in particular, a biennial report (regulations 23 and 27). There is also a requirement that, where a contracting authority contributes more than half the consideration payable under certain Part A services contracts awarded by another person, compliance with the Regulations is made a condition of the contribution (regulation 25).

In addition, the Regulations regulate the procedures for the holding of a design contest, which may or not be part of the procedure leading to the award of a public services contract, where a jury selects the successful plans and designs from those submitted (regulation 24).

The Regulations also implement Council Directive [89/665/EEC](#) (OJ No.L395,30.12.89,p.33) on the co-ordination of the laws, regulations and administrative provisions relating to the application of review proceedings to the award of public supply and public works contracts as amended by Council Directive [92/50/EEC](#) to the extent that it relates to that Directive. 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 services contract is a duty owed to services providers. A breach of the duty is not a criminal offence but is actionable by a services provider. 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 32).

Finally, the Regulations amend the Public Supply Contracts Regulations 1991 to ensure that not more than one set of Regulations applies to any contract (regulation 33).