
STATUTORY INSTRUMENTS

1996 No. 2911

The Utilities Contracts Regulations 1996

PART I
GENERAL

Title and commencement

1. These Regulations may be cited as the Utilities Contracts Regulations 1996 and shall come into force on 12th December 1996.

Interpretation

2.—(1) In these Regulations—

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

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

“the Commission” means the European Commission;

“contract” means any services contract, supply contract or works contract;

“contract documents” means the invitation to tender for or to negotiate the contract, the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the utility and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with regulation 15(2) (b);

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

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

(a) which is conducted by a utility in which it invites the entry of plans or 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 utility 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(1);

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

“financial year” means the period of 12 months ending on the date in any year in respect of which the accounts of a utility are prepared;

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

“framework agreement” means an agreement or other arrangement which is not in itself a supply, works or services contract, which establishes the terms (in particular the terms as to price and where appropriate quantity) under which the provider will enter into such contracts with a utility in the period during which the framework agreement applies;

“goods” includes electricity, substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under a supply contract, any ship, aircraft or vehicle and, when the utility is an entity specified in Part T of Schedule 1, is deemed to include telecommunications software services;

“Minister” has the meaning ascribed to it by regulation 28;

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

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

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

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

“periodic indicative notice” means a notice sent to the Official Journal in accordance with regulation 14;

“provider” means any supplier, contractor or services provider;

“public telecommunications network” means an infrastructure for the use of the public which enables signals to be conveyed by wire, microwave, optical means or other electromagnetic means between physical connections which are necessary for access to and efficient communication through the network;

“public telecommunications services” means services which consist in whole or in part in the transmission and routing of signals on a public telecommunications network by means of telecommunications processes other than radio broadcasting and television;

“relevant State” has the meaning ascribed to it by regulation 4(2);

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

“services contract” means a contract in writing for consideration (whatever the nature of the consideration), other than a supply contract or a works contract, under which a utility engages a person to provide services but does not include—

- (i) a contract of employment or other contract of service; or
- (ii) a contract under which a utility engages a person to provide to the public services lying within its responsibility and under which the consideration given by the utility consists of or includes the right to exploit the provision of the services;

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

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

“software services” means the design or adaptation of software;

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

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

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

- (a) for the purchase of goods by a utility (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event), or
- (b) for the hire of goods by a utility (both where the utility becomes the owner of the goods after the end of the period of hire and where it does not),

and for any siting and installation of those goods, but where, under such a contract, services are also to be provided, the contract shall only be a supply contract if the value of the consideration attributable to the goods is greater than the value attributable to the services;

“telecommunications software services” means software services for use in the operation of a public telecommunications network or which are intended to be used in the provision of a public telecommunications service as such;

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

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

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

“works” means any of the activities specified in Schedule 3 being activities contained in the general industrial classification of economic activities within the Communities;

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

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

“year” means a calendar year.

(2) For the purposes of these Regulations—

- (a) “Part A services contract” is a contract under which services specified in Part A of Schedule 4 are to be provided;
- (b) “Part B services contract” is a contract under which services specified in Part B of Schedule 4 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 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 93/38/EEC(3) published from time to time in the Official Journal(4).

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

(2) 1971 c. 80.

(3) OJ No. L199, 9.8.93, p.84.

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

- (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.

Utilities

3.—(1) For the purposes of these Regulations a utility is a person specified in the first column of Schedule 1 who carries on an activity listed in the second column of any part of Schedule 1 in which it is specified but only if that person is—

- (a) a relevant person, or
 - (b) a person who supplies drinking water, electricity, gas or heat to a network itself operated by a relevant person.
- (2) For the purposes of this regulation and Schedule 1—

“local authority” means an authority in England and Wales, in Scotland or in Northern Ireland referred to in paragraphs (2) to (4) respectively of regulation 3 of the Public Works Contracts Regulations 1991⁽⁵⁾;

“network”, in relation to a service in the field of transport, means a system operated in accordance with conditions laid down by or under the law in any part of the United Kingdom including such conditions as the routes to be served, the capacity to be made available and the frequency of the service;

“public authority” means a contracting authority within the meaning of regulation 3(1) of the Public Works Contracts Regulations 1991⁽⁶⁾;

“public telecommunications network” has the meaning ascribed to it by regulation 2(1);

“public telecommunications services” has the meaning ascribed to it by regulation 2(1);

“public undertaking” means a person over whom one or more public authorities are able to exercise directly or indirectly a dominant influence by virtue of—

- (a) their ownership of it,
- (b) their financial participation in it, or
- (c) the rights accorded to them by the rules which govern it;

and in particular a public authority shall be considered to be able to exercise a dominant influence over a person when it directly or indirectly—

- (d) possesses the majority of the issued share capital of that person or controls the majority of the voting power attached to the issued share capital of that person, or
- (e) may appoint more than half of the individuals who are ultimately responsible for managing that person’s affairs, more than half its members or, in the case of a group of individuals, more than half of those individuals;

“relevant person” means a person who is—

- (a) a public authority,
- (b) a public undertaking, or

⁽⁵⁾ S.I.1991/2680 as amended by S.I. 1992/3279.

⁽⁶⁾ S.I. 1991/2680 as amended by S.I. 1992/3279.

- (c) not a public authority or a public undertaking and has as one of its activities an activity specified in the second column of Schedule 1 other than an activity specified in paragraphs 2 or 3 thereof and carries out that activity on the basis of a special or exclusive right; and

“special or exclusive right” means a right deriving from any authorisation granted by a competent authority where the effect of the authorisation is to reserve for one or more persons the exploitation of an activity specified in the second column of Schedule 1, and in particular a person may be considered to enjoy a special or exclusive right where for the purpose of constructing a network or facilities referred to in the second column of Schedule 1 it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over a highway.

Suppliers, contractors and services providers

4.—(1) For the purposes of these Regulations—

- (a) a “supplier” means a person who sought, or who seeks, or would have wished, to be the person to whom a supply contract is awarded;
- (b) a “contractor” means a person who sought, or who seeks, or would have wished, to be the person to whom a works contract is awarded; and
- (c) a “services provider” means a person who sought or who seeks, or who would have wished,
 - (i) to be the person to whom a services contract is awarded, or
 - (ii) to participate in a design contest, and,

in every case, is a person who is a national of and established in a relevant State.

(2) In these Regulations a relevant State is a member State or a State listed in column 1 of Schedule 2 hereto; the agreements with the European Union by which the provisions in relation to public procurement are extended to those States are specified in column 2 to that Schedule and the statutory provision designating them as European Treaties under section 1(3) of the European Communities Act 1972 are specified in Column 3 to that Schedule.

(3) When these Regulations apply a utility shall not discriminate between providers: and it shall not treat a person who is not a national of and established in a relevant State more favourably than one who is.

Application of the Regulations

5.—(1) These Regulations apply whenever a utility seeks offers in relation to a proposed supply, works or Part A services contract other than a contract excluded from the operation of these Regulations by regulation 6, 7, 8 or 10 below.

(2) Whenever a utility seeks offers in relation to a proposed Part B services contract other than one excluded by virtue of regulation 6, 7, 8 or 10 below, Part I (General) and Part VII (Applications to the court) apply but only the following provisions in Parts II to VI apply—

- regulation 12 (Technical specifications in contract documents)
- regulation 23 (Contract award notice)
- 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 contract—
- (a) other than for the purpose of carrying out an activity specified in the Part of Schedule 1 in which the utility is specified;
 - (b) for the purpose of carrying out any activity outside the territory of the Communities but only if the carrying out of that activity does not involve the physical use of a network or geographical area within the Communities;
 - (c) for the purpose of acquiring goods, works or services in order to sell, hire or provide them to another person unless the utility has a special or exclusive right to sell, hire or provide such goods, works or services or other persons are not free to sell, hire or provide them under the same conditions;
 - (d) which is classified as secret by a Minister of the Crown or where the performance of the contract 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 requires it;
 - (e) where different rules 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 relevant State are parties and it relates to goods or provides for the carrying out of works or the provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement;
 - (ii) pursuant to an international agreement relating to the stationing of troops; or
 - (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members;
 - (f) by a utility which engages in an activity specified in Part A, B or C of Schedule 1 for the purchase of water;
 - (g) by a utility which engages in an activity specified in Parts D to N of Schedule 1 for the purchase of energy or of fuel for the production of energy;
 - (h) by a utility specified in Column 1 of Part S of Schedule 1 for the purpose of engaging in an activity specified in Column 2 of that Part of that Schedule where that activity is provided in a geographical area in which other persons are free to provide the service under the same conditions as the utility;
 - (i) under which services are to be provided by a contracting authority within the meaning of the Public Services Contracts Regulations 1993⁽⁷⁾ or by a person which is a contracting authority in another relevant State for the purposes of Council Directive 92/50/EEC⁽⁸⁾ 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;
 - (j) 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;
 - (k) for voice telephony, telex, radiotelephony, paging or satellite services;

⁽⁷⁾ S.I. 1993/3228.

⁽⁸⁾ OJ No. L209, 24.7.92, p.1.

- (l) for arbitration or conciliation services;
- (m) for the issue, purchase, sale or transfer of securities or other financial instruments;
- (n) for research and development services unless—
 - (i) the benefits are to accrue exclusively to the utility for its use in the conduct of its own affairs, and
 - (ii) the services are to be wholly paid for by the utility.

Exclusion in respect of certain contracts awarded by utilities operating in the telecommunications sector

7.—(1) These Regulations shall not apply to the seeking of offers in relation to a contract by a utility specified in Part T of Schedule 1 intended exclusively to enable it to provide one or more public telecommunications services where other entities are free to offer the same services in the same geographical area and under substantially the same conditions.

(2) A utility when requested by the Commission shall notify it of any public telecommunications services provided by it which it considers are excluded by paragraph (1) above.

(3) A utility may indicate that any of the information included in a report referred to in paragraph (2) above is of a sensitive commercial nature and require that it be not published.

Exclusion of services contracts awarded to affiliated undertakings

8.—(1) For the purposes of this regulation—

- (a) an “affiliated undertaking” means
 - (i) in respect of a utility which is subject to the seventh Council Directive [83/349/EEC](#) of 13 June 1983 on consolidated accounts⁽⁹⁾, any undertaking the accounts of which are consolidated with those of that utility;
 - (ii) in any other case, any undertaking which is either a parent undertaking, a subsidiary undertaking or a fellow subsidiary undertaking of the utility, and
 - (aa) an undertaking is a parent undertaking of a utility if it exercises a dominant influence over it, directly or indirectly, and for these purposes an undertaking will exercise a dominant influence over another if—
 - (i) it possesses the greater part of the issued share capital of that undertaking or controls the majority of the voting power attached to the issued share capital of that undertaking, or
 - (ii) it may appoint more than half of the individuals who are ultimately responsible for managing the affairs of that company
 - and an undertaking is a subsidiary undertaking of a utility if the utility exercises such dominant influence over it;
 - (bb) an undertaking is a fellow subsidiary undertaking of a utility if both are subsidiary undertakings of the same parent undertaking.
- (b) a “relevant affiliated undertaking” is one which has as one of its activities the provision of services and which provides those services principally to one or more of its affiliated undertakings: without prejudice to the determination of whether services are principally provided to affiliated undertakings in other cases, in the case of an undertaking which has been in existence for 36 months or more, it shall be taken to be so if, for the preceding 36 months, 80% or more of the average turnover of

(9) OJ No. L193, 18.7.83, p. 1 as amended by Council Directive [90/605/EEC](#) (OJ No. L317, 16.11.90, p. 60).

- (i) the undertaking, or
- (ii) it and of any affiliated undertaking

in respect of the provision of services of the type or similar to those to be provided under the contract within member States was derived from the provision of those services to affiliated undertakings.

(2) These Regulations shall not apply to the seeking of offers in relation to a services contract which—

- (a) a utility proposes to award to a relevant affiliated undertaking, or
- (b) a joint venture formed for the purpose of carrying out any of the activities specified in the second column of Schedule 1 proposes to award to one of its members which is a utility or to a relevant affiliated undertaking of such a member.

(3) A utility which relies on the exclusion in paragraph (2) above, shall, if the Commission requests it, send to the Minister the following information—

- (a) the names of the undertakings concerned;
- (b) the value of the consideration and the type of services to be provided under any services contract so excluded;
- (c) any information which is necessary to justify the use of the exclusion.

Exemption in respect of certain utilities operating in the energy sector

9.—(1) Where the Commission has decided that an activity specified in Parts M or N of Schedule 1 to these Regulations is not to be considered an activity defined in article 2(2)(b)(i) of Council Directive 93/38/EEC⁽¹⁰⁾ and that entities undertaking that activity shall not be considered as operating under special or exclusive rights by virtue of article 2(3)(b) of that Directive, a utility need not comply with Parts II to V of these Regulations and regulations 24, 25, 26, 27 other than paragraph (2)(a), 29 and 31 below in seeking offers in relation to a contract to be awarded for the purpose of carrying out any activity referred to in that decision.

(2) A utility which relies on the exemption in paragraph (1) above shall observe the principles of non-discrimination and competitive procurement, and in particular shall—

- (a) hold a competition unless it can objectively justify not doing so; and
- (b) in making information about its procurement intentions available to providers, in specifying its requirements to them, in establishing and using a qualification system, in selecting providers to tender for or to negotiate the contract, in holding any design contest and in awarding the contract, make decisions objectively on the basis of relevant criteria.

(3) A utility which relies on the exemption in paragraph (1) above shall—

- (a) in respect of a contract awarded by it the value of which, calculated in accordance with regulation 10 below, exceeds 5,000,000 ECU, send to the Commission no later than 48 days after the award the following information—
 - (i) the name and address of the utility;
 - (ii) the nature of the contract, namely whether it is a supply, works or services contract and whether it is a framework agreement;
 - (iii) a clear indication of the nature of the goods, work, works or services to be provided (for example, by using the Classification of Products by Activity);
 - (iv) whether the contract was advertised and, if so, in which publication and, if not, the procedure or method used to decide to whom the contract should be awarded;

⁽¹⁰⁾ OJ No. L199, 9.8.93, p. 84.

- (v) the number of offers received;
 - (vi) the date of the award of the contract;
 - (vii) the name and address of the person to whom the contract was awarded;
 - (viii) the value of the contract, calculated in accordance with regulation 10 below;
 - (ix) the expected duration of the contract;
 - (x) any share of the contract which has been, or may be, sub-contracted to which over 10% of the value of the consideration to be given under the contract is attributable;
 - (xi) in the case of a supply contract the country of origin of the goods and in the case of a works or services contract the principal country from which the contract is to be performed;
 - (xii) where the contract was awarded on the basis of the offer which was the most economically advantageous, the main criteria on which the decision was based; and
 - (xiii) whether the contract was awarded to a person who offered a variant on the requirements specified in the contract documents; and
- (b) in respect of a supply or services contract awarded by it the value of which, calculated in accordance with regulation 10 below, equals or exceeds 400,000 ECU but does not exceed 5,000,000 ECU—
- (i) retain the information specified in sub-paragraph (a)(i) to (ix) above for not less than 4 years after the award; and
 - (ii) either—
 - (aa) if the Commission requests that information in relation to any such contract, forthwith send it to the Minister, or
 - (bb) where no such request has been made, send that information to the Commission⁽¹¹⁾ no later than 48 days after the end of the period of 3 months ending on the last day of March, June, September or December in which the contract was awarded.

Thresholds

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

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

- (a) in relation to a supply or services contract to be awarded by a utility other than one specified in Part T of Schedule 1, is 400,000 ECU;
- (b) in relation to a supply or services contract to be awarded by a utility specified in part T of Schedule 1, is 600,000 ECU; and
- (c) in relation to a works contract, is 5,000,000 ECU.

(3) Subject to paragraphs (5), (7), (10), (11), (12), (13), (16) and (18) below in the case of a supply contract, subject to paragraphs (8), (9), (14), (15) and (18) below in the case of a works contract, and subject to paragraphs (4), (6), (7), (10), (11), (12), (13), (16) and (18) below in the case of a services contract, the estimated value of a contract for the purposes of paragraph (1) above shall be the value of the consideration which the utility expects to be payable under the contract.

⁽¹¹⁾ The relevant department in the Commission is DGXV/b/4 whose address is 200 Rue de la Loi, Brussels B-1049.

(4) In determining the value of the consideration which the utility expects to be payable under a 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.

(5) The estimated value for the purposes of paragraph (1) above of a supply contract for the hire of goods for an indefinite period, or for a period which is uncertain at the time the contract is entered into, shall be the value of the consideration which the utility expects to be payable in respect of the first four years of the hire.

(6) The estimated value for the purposes of paragraph (1) above of a services contract under which services are to be provided over a period exceeding 4 years or over an indefinite period, in cases where the contract does not indicate a total cost, shall be the value of the consideration which the utility expects to be payable in respect of each month of the period multiplied by 48.

(7) Subject to paragraph (12) below, where a utility has a single requirement for goods or services and a number of supplies or services contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of paragraph (1) above of each of those contracts shall be the aggregate of the value of the consideration which the utility expects to be payable under each of those contracts.

(8) Subject to paragraph (9) below, where a utility proposes to enter into two or more contracts for the carrying out of a work, the estimated value for the purposes of paragraph (1) above of each of those contracts shall be the aggregate of the value of the consideration which the utility expects to be payable under each of those contracts.

(9) Paragraph (8) above shall not apply to any works contract (unless the utility chooses to apply that paragraph to that contract) if that contract has an estimated value (calculated in accordance with paragraph (3) above) of less than 1,000,000 ECU, and the aggregate value of that contract and of any other contract in respect of which the utility takes advantage of the disapplication of paragraph (8) above by virtue of this paragraph is less than 20 per cent of the aggregate of the value of the consideration which the utility has given or expects to be payable under all the contracts entered or to be entered into for the carrying out of the work.

(10) Subject to paragraph (12) below, where a utility has a requirement over a period—

- (a) for the purchase or hire of goods of the type to be purchased or hired under the contract; or
- (b) for services of the type to be provided under the contract,

and for that purpose enters into—

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

the estimated value for the purposes of paragraph (1) above of the contract shall be the amount calculated under paragraph (11) below.

(11) The utility shall calculate the amount referred to in paragraph (10) above either—

- (a) by taking the aggregate of the value of the consideration payable under contracts which have similar characteristics and which are for the purchase or hire of goods of the type to be purchased or hired under the contract or for the provision of services of the type to be provided under the contract, during the last financial year of the utility ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods to be purchased or hired or services to be provided 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 utility expects to be payable under contracts which have similar characteristics, and which are for the purchase or hire of goods of the type to be purchased or hired under the contract or for the provision of services of the type to be provided under the contract, during the period of 12 months from the first date—

(i) of delivery of the goods to be purchased or hired, in the case of supply contracts;

(ii) on which the services will be performed, in the case of services contracts,

or, where the contract is either a supply or services contract for a definite term of more than 12 months, during the term of the contract.

(12) Notwithstanding paragraphs (7) and (10) above, in relation to a supply or services contract, when the goods to be purchased or hired or the services to be provided under the contract are required for the sole purposes of a discrete operational unit within the organisation of a utility and—

(a) the decision whether to procure the goods or services has been devolved to such a unit, and

(b) that decision is taken independently of any other part of the utility,

the valuation methods described in paragraphs (7) and (11) above shall be adapted by aggregating only the value of the consideration which was payable or the utility expects to be payable, as the case may be, under contracts for the purchase or hire of goods or for the provision of services which were or are required for the sole purposes of that unit.

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

(14) Where a utility intends to provide any goods or services to the person awarded a works contract for the purpose of carrying out that contract, the value of the consideration for the purposes of paragraphs (3) and (8) above shall be taken to include the estimated value at the relevant time of those goods and services.

(15) Where the estimated value of a works contract is less than the threshold and where goods or services which are not necessary for its execution are to be purchased, hired or provided under it, the estimated value of the contract for the purposes of paragraph (1) above shall be the value of the consideration which the utility expects to give for the goods and services and the relevant contract shall be treated as a supply or services contract, as appropriate.

(16) Where under a contract both goods are to be purchased or hired and services are to be provided, the estimated value of the contract shall be the aggregate of the values of the consideration attributable to the purchase or hire of the goods including any siting and installation of the goods and of the consideration attributable to the provision of the services, regardless of whether the estimated value of either the goods or services is less than the threshold specified in paragraph (2) above.

(17) The estimated value of a framework agreement shall be the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement.

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

(19) The relevant time for the purposes of paragraphs (1), (11) and (14) above means—

(a) if the utility selects providers to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 18, the date on which the selection commences, or

- (b) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with regulation 15(2)(a)(i), the date on which the notice is sent to the Official Journal; or
- (c) in any other case, the date on which a contract notice would be sent to the Official Journal if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by sending such a notice.

Framework agreements

11.—(1) A utility which is proposing to enter into a framework agreement may choose to treat that agreement as a contract to which these Regulations apply; accordingly, in respect of such an agreement references in these Regulations to a contract shall include a reference to such a framework agreement.

(2) A utility which chooses to treat a framework agreement as a contract under paragraph (1) above shall not use the framework agreement to hinder, limit or distort competition.