
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 1

GENERAL

CHAPTER 3

MATERIAL SCOPE

SECTION 2

*Excluded contracts and design contests; special provisions
for procurement involving defence and security aspects*

SUB-SECTION 2 Procurement involving defence and security aspects

Procurement covering several activities and involving defence or security aspects

26.—(1) This regulation applies in the case of contracts intended to cover several activities where one of those activities involves defence or security aspects.

(2) Utilities may choose to award separate contracts for the purposes of each separate activity or to award a single contract.

(3) Where utilities choose to award separate contracts for separate activities, the decision of which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate activity concerned.

(4) The choice between awarding a single contract and awarding a number of separate contracts shall not be made with the objective of excluding the contract or contracts from the scope of these Regulations or the Defence and Security Regulations.

(5) Where utilities choose to award a single contract, the following shall apply—

(a) in the case of a contract intended to cover an activity which is covered by these Regulations and another which is covered by the Defence and Security Regulations, the utility may award the contract in accordance with the Defence and Security Regulations.

(b) in the case of a contracts intended to cover an activity which is covered by these Regulations and another which is covered by Article 346 of TFEU, the utility may award the contract without applying these Regulations.

(6) Paragraph (5)(a) is without prejudice to the thresholds and exclusions for which the Defence and Security Regulations provide.

(7) Contracts referred to in paragraph (5)(a), which also includes procurement or other elements which are covered by Article 346 of TFEU may be awarded without applying these Regulations.

(8) Paragraphs (5) to (7) apply provided that the award of a single contract is justified by objective reasons and the decision to award a single contract is not taken for the purpose of excluding contracts from the application of these Regulations.