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SCOTTISH STATUTORY INSTRUMENTS

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**2016 No. 49**

**The Utilities Contracts (Scotland) Regulations 2016**

**PART 2**

**RULES APPLICABLE TO CONTRACTS**

**CHAPTER 2**

**TECHNIQUES AND INSTRUMENTS FOR  
ELECTRONIC AND AGGREGATED PROCUREMENT**

**Procurement involving utilities from different member States**

**55.**—(1) Without prejudice to regulations 27 to 30, a utility may act jointly with a utility from another member State in the award of a contract by using one of the means provided for in this regulation.

(2) A utility must not use the means provided for in this regulation for the purpose of avoiding the application of mandatory public law provisions in the applicable law of the jurisdiction to which the utility is subject, where those provisions are in conformity with EU law.

(3) A utility may use centralised purchasing activities offered by a central purchasing body located in another member State.

(4) A utility may only use the provision of centralised purchasing activities by a central purchasing body located in another member State where they are conducted in accordance with the national provisions of the member State where the central purchasing body is located.

(5) The national provisions of the member State where the central purchasing body is located also apply to—

- (a) the award of a contract under a dynamic purchasing system; and
- (b) the conduct of a reopening of competition under a framework agreement.

(6) In the circumstances set out in paragraph (7), several utilities from different member States may—

- (a) jointly award a contract, conclude a framework agreement or operate a dynamic purchasing system; and
- (b) award contracts based on the framework agreement or award contracts under the dynamic purchasing system.

(7) The circumstances referred to in paragraph (6) are that—

- (a) unless the necessary elements have been regulated by an international agreement concluded between the member States concerned, the participating utilities have concluded an agreement that determines—

- (i) the responsibilities of the parties and the relevant applicable national provisions; and

(ii) the internal organisation of the procurement, including the management of the procedure, the distribution of the works, supplies or services to be procured, and the conclusion of contracts; and

(b) the allocation of responsibilities and the applicable national law have been referred to in the procurement documents.

(8) When determining responsibilities and the applicable national law as referred to in paragraph (7)(a)(i), the participating utilities may allocate specific responsibilities among them and determine the applicable provisions of the national laws of any of their respective member States.

(9) A participating utility fulfils its obligations under these Regulations when it purchases works, supplies or services from a utility which is responsible for the procurement.

(10) Utilities from different member States may set up a joint entity for the purpose of paragraph (1), subject to compliance with paragraph (11).

(11) The participating utilities must, before undertaking any given procurement, by a decision of the competent body of the joint entity, agree on the applicable national procurement rules of one of the following—

(a) the member State where the joint entity has its registered office; or

(b) the member State where the joint entity is carrying out its activities.

(12) The agreement referred to in paragraph (11) may either apply for an undetermined period, when fixed in the constitutive act of the joint entity, or may be limited to a certain period of time, to certain types of contract or to one or more individual contract awards.

(13) The other provisions of these Regulations apply to procurement by the joint entity only where they are the national provisions applicable in accordance with paragraph (11).

(14) In this regulation—

“central purchasing body located in another member State” means any person which is a central purchasing body for the purposes of paragraph (12) of Article 2 of the Utilities Contracts Directive in the member State in which it is located;

“joint entity” includes European groupings of territorial cooperation under Regulation [\(EC\) No 1082/2006](#) of the European Parliament and of the Council on a European grouping of territorial cooperation<sup>(1)</sup> and other entities established under EU law; and

“utility from another member State” means any person which is a contracting entity for the purposes of Article 4 of the Utilities Contracts Directive in a member State other than the United Kingdom; and references to “participating utilities” to the extent that they are from another member State shall be interpreted accordingly.

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(1) OJ L 210, 31.7.2006, p.19.