
STATUTORY INSTRUMENTS

1992 No.3279

PUBLIC PROCUREMENT

The Utilities Supply and Works Contracts Regulations 1992

Made - - - - - *23rd December 1992*
Laid before Parliament *23rd December 1992*
Coming into force - - - *13th January 1993*

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 upon 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 Utilities Supply and Works Contracts Regulations 1992 and shall come into force on 13th January 1993.

Interpretation

2.—(1) In these Regulations—

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

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

“the Commission” means the Commission of the Communities;

“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;

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

“contract notice” means a notice sent to the Official Journal in accordance with regulation 14(2) (b);

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

“ECU” means the European Currency Unit as defined in Council Regulation (EEC) No. 3180/78(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 the date in any year in respect of which the accounts of a utility are prepared;

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

“goods” includes 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 27;

“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 utility 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;

“periodic indicative notice” means a notice sent to the Official Journal in accordance with regulation 13;

“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 process other than radio broadcasting and television;

“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;

“ship” includes any boat and any other 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;

(3) 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).

“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 and to any siting or installation of 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 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 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(4);

“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) 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 90/531/EEC(5) as published from time to time in the Official Journal(6).

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

- (a) within a period after an action is taken, the day on which that action was taken shall not be counted in the calculation of that period;
- (b) within a certain period, that period must include 2 working days;
- (c) within a period and the last day of that period is not a working day, the period shall be extended to include the following working day.

(4) References in these Regulations to a regulation are references to a regulation in these Regulations and references to a Schedule are references to a Schedule to these Regulations.

(4) 1971 c. 80.

(5) OJ No. L297, 29.10.90, p.1.

(6) 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.

Utilities

3. For the purposes of these Regulations a utility is a person specified in the first column of Schedule 1.

Suppliers and Contractors

4.—(1) For the purposes of these Regulations 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, and 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 in either case means a person who is a national of and established in a member State.

(2) When these Regulations apply a utility shall not treat a person who is not a national of and established in a member State more favourably than one who is.

Application of the Regulations

5. These Regulations apply whenever a utility seeks offers in relation to a proposed supply contract or a proposed works contract other than contracts excluded from the operation of these Regulations by regulations 6, 7 and 9 below.

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 or works in order to sell or hire them to another person unless the utility has a special or exclusive right to sell or hire such goods or works or other persons are not free to sell or hire them under the same conditions;
 - (d) which is classified as secret by the Minister 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 require it;
 - (e) where different procedures govern the procedures leading to the award of the contract and it is to be entered into—
 - (i) pursuant to an international agreement to which the United Kingdom and a State which is not a member State are parties and it relates to goods or provides for the carrying out of works intended for the joint implementation or exploitation of a project pursuant to that agreement;
 - (ii) pursuant to an international agreement relating to the stationing of troops; or
 - (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members.
 - (f) by a utility which engages in an activity specified in Part A, B or C of Schedule 1 for the purchase of water; and
 - (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;

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 Schedule 2 for the exclusive purpose of enabling it to provide one or more of the public telecommunications services specified in the Part of Schedule 2 in which the utility is specified.

(2) A utility specified in Schedule 2 when requested shall send a report to the Minister for onward transmission to the Commission describing the public telecommunications services provided by it which it considers are services specified in the Part of Schedule 2 in which the utility is specified.

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

Exemption in respect of certain utilities operating in the energy sector

8.—(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 90/531/EEC(7) 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 23, 24, 25, 26 other than paragraph 2(a), and 28 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 suppliers and contractors, in specifying its requirements to them, in establishing and using a qualification system, in selecting suppliers or contractors to tender for or to negotiate the contract and in awarding the contract, make decisions objectively on the basis of relevant criteria.

Thresholds

9.—(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 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 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 (4), (5), (6), (9), (14) and (15) below in the case of a supply contract, and subject to paragraphs (10), (11), (12), (13), (14) and (15) below in the case of a works 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 give under the contract.

(4) 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

(7) OJ No. L297, 29.10.90, p.1.

into, shall be the value of the consideration which the utility expects to give in respect of the first four years of the hire.

(5) Subject to paragraph (8) below where a utility proposes to enter into two or more supply contracts at the same time in order to purchase or hire goods of a particular type, 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 give under each of those contracts.

(6) Subject to paragraph (8) below where a utility has a requirement over a period to purchase or hire goods of the type to be purchased or hired under the contract and for that purpose enters into—

- (a) a series of supply contracts,
- (b) a supply contract which under its terms is renewable, or
- (c) a supply contract which is for the purchase of goods over an indefinite period,

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

(7) The utility 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 utility under supply 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, 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 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 give under supply 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, during the period of 12 months from the first date of delivery of the goods to be purchased or hired under the contract or, where the contract is for a definite term of more than 12 months, during the term of the contract.

(8) Notwithstanding paragraphs (5) and (6) above when the goods to be purchased or hired 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 purchase or hire goods of that type 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 (5) and (7) above shall be adapted by aggregating only the value of the consideration which the utility has given or expects to give, as the case may be, under contracts for the purchase or hire of goods which were or are required for the sole purposes of that unit.

(9) Where a supply 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.

(10) Subject to paragraphs (11) and (12) below, the estimated value for the purposes of paragraph (1) above of a works contract which is one of a number of contracts entered or to be entered into for the carrying out of a work shall be the aggregate of the value of the consideration which the utility has given or expects to give under all the contracts for the carrying out of the work.

(11) Paragraph (10) 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 works contract for the carrying out of the work in respect of which the utility takes

advantage of the disapplication of paragraph (10) 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 give under all the contracts for the carrying out of the work.

(12) 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 (10) above shall be taken to include the estimated value at the relevant time of those goods and services.

(13) Where the estimated value of a works contract estimated in accordance with paragraph (3) above is less than the relevant threshold and where goods which are not necessary for its execution are to be purchased or hired 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 the relevant threshold shall be determined in accordance with paragraph (2) above as if the works contract were a supply contract.

(14) 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.

(15) A utility shall not enter into separate 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.

(16) The relevant time for the purposes of paragraphs (1), (7) and (12) above means—

- (a) if the utility selects suppliers or contractors to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 17 below, 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 14(2)(a)(i) below, 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

10.—(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; and, 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.

PART II

TECHNICAL SPECIFICATIONS

Technical specifications in the contract documents

11.—(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;

“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”) according to its own rules as a “European Telecommunications Standard (“ETS”)”;

“European technical approval” means an approval of the fitness of a product for a particular use, 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 as provided for in Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative procedures in the member States relating to construction projects⁽⁸⁾;

“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, materials or goods (such as quality, performance, safety or dimensions) so that the works, work, materials or goods are described objectively in a manner which will ensure the use for which they are intended by the utility. In relation to materials and goods, “technical specifications” include requirements in respect of quality assurance, terminology, symbols, test 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 the work or works, the methods or techniques of construction and all other technical conditions.

(2) If a utility wishes to lay down technical specifications which the goods to be purchased or hired under a supply contract or the work or works to be carried out under a works contract and which the materials and goods used in or for a works contract 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 shall be defined by reference to any European specifications which are relevant.

(4) A utility may define the technical specifications referred to in paragraph (3) above other than by reference to relevant European specifications if—

- (a) the utility is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in the United Kingdom (but only to the extent that such an obligation is compatible with Community obligations);
- (b) it is technically impossible to establish satisfactorily that the goods, materials, work or works do conform to the relevant European specifications;
- (c) definition by reference to European specifications would conflict with the application of Council Directive [91/263/EEC](#) on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment⁽⁹⁾ or Council Decision [87/95/EEC](#) on standardisation in the field of information technology and telecommunications⁽¹⁰⁾;
- (d) subject to paragraph (5) below, application of European specifications would oblige the utility to acquire a work, works or goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties;

⁽⁸⁾ OJ No. L40, 11.2.89, p.12.

⁽⁹⁾ OJ No. L128, 23.5.91, p.1.

⁽¹⁰⁾ OJ No. L36, 7.2.87, p.31.

(e) subject to paragraph (6) below, the relevant European specification is inappropriate for the particular purpose or it does not take account of technical developments which have come about since its adoption;

(f) the project for which the contract is to be entered into is of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

(5) A utility may only define the technical specifications other than by reference to European specifications on the grounds specified in paragraph (4)(d) above where the utility has a clearly defined and recorded strategy for changing over to European specifications.

(6) A utility relying on the derogation in paragraph (4)(e) above shall inform the appropriate standardising organisation or other body empowered to review the European specification, of the reasons why it considers the European specification to be inappropriate and shall request its revision.

(7) A utility shall state in any contract notice or periodic indicative notice sent pursuant to regulation 14(2)(a)(i) below which of the circumstances specified in paragraph (4) above was the ground for defining the technical specifications other than by reference to European specifications.

(8) In the absence of European specifications which relate to the matter in respect of which the utility wishes to lay down technical specifications, the technical specifications in the contract documents shall be defined, as far as possible, by reference to other standards which are in common use within the Community.

(9) If it is necessary to lay down further technical specifications to complement European specifications or other standards included in the contract documents the utility shall, if possible, lay down technical specifications that indicate performance requirements rather than design or description characteristics unless they would be inadequate.

(10) Subject to paragraph (12) below, the contract documents shall not include technical specifications which refer to goods of a specific make or source or to a particular process and which have the effect of favouring or eliminating particular suppliers or contractors.

(11) Without prejudice to the generality of paragraph (10) above, references to trademarks, patents, types, origin or means of production shall not be incorporated into the technical specifications in the contract documents.

(12) Notwithstanding paragraph (10) and (11) above, a utility may incorporate the references referred to in paragraph (10) and (11) above into the technical specifications in the contract documents if—

(a) the subject of the contract makes the use of such references indispensable, or

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

(13) Subject to paragraph (14) below, the utility shall provide to any supplier or contractor who requests it a copy of the technical specifications which are regularly laid down as terms of the supply and works contracts which it awards or which it intends to lay down as terms of a contract which has been indicated in a periodic indicative notice sent to the Official Journal in accordance with regulation 13 below.

(14) Where the technical specifications referred to in paragraph (13) above are based on documents which are available to suppliers and contractors the obligation in paragraph (13) shall be satisfied by informing any supplier or contractor who requests it of the documents which include those technical specifications.

PART III

PROCEDURES LEADING TO THE AWARD OF A CONTRACT

The Open, Restricted and Negotiated Procedures

12. For the purposes of seeking offers in relation to a proposed contract a utility shall use the open, the restricted or the negotiated procedure.

Periodic indicative notices

13.—(1) Subject to paragraphs (2) and (3) below, a utility shall, at least once every 12 months, send to the Official Journal a notice, in a form substantially corresponding to that set out in Part A of Schedule 4 and containing the information therein specified, in respect of—

- (a) the supply contracts which the utility expects to award during the period of 12 months beginning with the date of the notice; and
- (b) the works contracts which the utility expects to award.

(2) The obligation under paragraph (1)(a) above shall apply only to those supply contracts whose estimated value (within the meaning of regulation 9 above) at the date of despatch of the notice is not less than the relevant threshold specified in regulation 9(2) above and which are for the purchase or hire of goods of a type which the utility expects at the date of despatch of the notice to purchase or hire under supply contracts which have an estimated value (within the meaning of regulation 9(3), (9) and (14) above) which in aggregate for that type of goods is, or is more than, 750,000 ECU.

(3) The obligation under paragraph 1(b) above shall apply only to those works contracts whose estimated value at the date of despatch of the notice is not less than the relevant threshold specified in Regulation 9(2) above.

(4) A notice sent to the Official Journal in accordance with paragraph (1) above need not repeat information about contracts included in a previous periodic indicative notice, provided that the notice clearly states that it is an additional notice.

Call for competition

14.—(1) Subject to regulation 15, for the purposes of seeking offers in relation to a proposed contract a utility shall make a call for competition.

(2) The requirement under paragraph (1) above to make a call for competition shall be satisfied—

- (a) in the case of a contract to be awarded using the restricted or negotiated procedure—
 - (i) if the intention to award the contract has been indicated in a periodic indicative notice and the requirements referred to in paragraph (3) below are satisfied in relation to the contract; or
 - (ii) if a notice indicating the existence of a qualification system for suppliers or contractors has been sent to the Official Journal in accordance with regulation 17(12) below and the requirement referred to in paragraph (4) below is satisfied; or

(b) in any case by sending to the Official Journal a contract notice in a form substantially corresponding to that set out in—

- (i) Part B of Schedule 4, in the case of a contract to be awarded using the open procedure,
- (ii) Part C of Schedule 4, in the case of a contract to be awarded using the restricted procedure, and
- (iii) Part D of Schedule 4, in the case of a contract to be awarded using the negotiated procedure,

and containing the information specified in the relevant Part in respect of the contract.

- (3) The requirements referred to in paragraph (2)(a)(i) above are that—
- (a) the periodic indicative notice refers specifically to the goods or works which are to be the subject of the proposed contract,
 - (b) the notice states that offers are to be sought using the restricted or negotiated procedure without further publication of a notice calling for competition and invites suppliers or contractors to express their interest in writing,
 - (c) the utility sends to all suppliers or contractors who express such an interest detailed information on the contract concerned and before beginning the selection of suppliers or contractors invites them to confirm their wish to be selected to tender for or to negotiate the contract, and
 - (d) the notice was not published more than 12 months before the date on which the invitation sent in accordance with sub-paragraph (c) above is sent.
- (4) The requirement referred to in paragraph (2)(a)(ii) above is that the suppliers or contractors selected to tender for or to negotiate the contract are selected from the candidates who qualify in accordance with the system.

Award without a call for competition

15.—(1) A utility may seek offers in relation to a proposed contract without a call for competition in the following circumstances—

- (a) in the absence of tenders or suitable tenders in response to a procedure with a call for competition but only if the original terms of the proposed contract have not been substantially altered;
- (b) when the contract is to be awarded purely for the purposes of research, experiment, study or development but not where it has the purpose of ensuring profit or of recovering research and development costs;
- (c) when for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may only be performed by a particular person;
- (d) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the utility, the time limits specified in regulation 16(1) to (4) below cannot be met;
- (e) when the contract to be awarded is a supply contract and the goods to be purchased or hired under the contract are required by the utility as a partial replacement for, or addition to, existing goods or an installation when to obtain the goods from a person other than the person who supplied the existing goods or the installation would oblige the utility to acquire goods having different technical characteristics which would result in—
 - (i) incompatibility between the existing goods or installation and the goods to be purchased or hired under the contract, or
 - (ii) disproportionate technical difficulties in the operation and maintenance of the goods or installation;
- (f) when the contract to be awarded is a works contract and the utility wants a person who has entered into a works contract with the utility to carry out additional works which through unforeseen circumstances were not included in the project initially considered or in the original works contract and—
 - (i) such works cannot for technical or economic reasons be carried out separately from the works carried out under the original works contract without great inconvenience to the utility, or

- (ii) such works can be carried out separately from the works carried out under the original works contract but are strictly necessary to the later stages of that contract;
 - (g) subject to paragraph (2) below when the contract to be awarded is a works contract and the utility wishes a person who has entered into a works contract with it following a call for competition which satisfies the requirement of regulation 14(1) above to carry out new works which are a repetition of works carried out under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into;
 - (h) in respect of a supply contract for the purchase or hire of goods quoted and purchased on a commodity market;
 - (i) when the contract to be awarded is to be awarded under a framework agreement which has been awarded in accordance with these Regulations and to which the provisions of regulation 10 apply;
 - (j) when the contract to be awarded is a supply contract, to take advantage of a particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices; and
 - (k) when the contract to be awarded is a supply contract, to take advantage of particularly advantageous conditions for the purchase of goods in a closing down sale or in a sale brought about by insolvency.
- (2) A utility shall not seek offers without a call for competition pursuant to paragraph (1)(g) above unless—
- (a) the original contract was awarded after a call for competition,
 - (b) when the utility invited contractors to tender for or to negotiate the contract it gave notice that a works contract for new works which would be a repetition of the works carried out under the original contract might be awarded without a call for competition pursuant to paragraph (1)(g) above, and
 - (c) in determining the estimated value of the original contract for the purposes of regulation 9 above the utility took into account the value of the consideration which it expected to pay for the new works.

Time Limits

16.—(1) Subject to paragraph (2) below, the date which a utility using the open procedure 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 notice and shall be not less than 52 days from the date of despatch of the notice.

(2) When the utility has published a periodic indicative notice in accordance with regulation 13(1) above it may substitute for the period of not less than 52 days specified in paragraph (1) above a period of not less than 36 days.

(3) The date which a utility using the restricted or the negotiated procedure with a call for competition shall fix as the last date for the receipt by it of requests to be selected to tender for or to negotiate the contract shall be specified in the contract notice or, where the call for competition is made by means of a periodic indicative notice, in the invitation to suppliers or contractors made in accordance with regulation 14(3)(c), and shall in general be at least five weeks from the date of the despatch of the notice or invitation and shall in any case be not less than 22 days from that date.

(4) The date which shall be the last date for the receipt of tenders made in response to an invitation to tender by a utility using the restricted or the negotiated procedure with a call for competition shall be agreed between the utility and the suppliers or contractors invited to tender and shall be the same date for all supplies or contractors or, in the absence of agreement to this date, shall be fixed by the utility and shall be as a general rule at least 3 weeks and in any event not less than 10 days from the date of despatch of the invitation to tender.

(5) In fixing the time limits referred to in paragraphs (1), (2) and (4) above a utility shall take into account the time required to allow for any examination of voluminous documentation such as lengthy technical specifications, or any inspection of the site or documents relating to the contract documents, which is necessary.

(6) A utility using the open procedure shall send the contract documents as a general rule within 6 days of the receipt of a request from any supplier or contractor provided that the documents are requested in good time and any fee specified in the contract notice has accompanied the request.

(7) A utility using the restricted or the negotiated procedure with or without a call for competition shall send invitations in writing and simultaneously to each of the suppliers or contractors selected to tender for or to negotiate the contract and the invitation shall be accompanied by the contract documents.

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

- (a) the address to which requests for any further information should be sent, the final date for making such a request and the amount and method of payment of any fee which may be charged for supplying that information;
- (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 any contract notice;
- (d) an indication of the information to be included with the tender;
- (e) the criteria for the award of the contract if this information was not specified in the contract notice; and
- (f) any other special contract condition.

(9) A utility using the open, the restricted or the negotiated procedure with or without a call for competition shall provide not less than 6 days before the final date for the receipt of tenders such further information relating to the contract documents as may reasonably be requested by a supplier or contractor provided the information is requested in good time and any fee specified in the contract notice or in the invitation to tender has accompanied the request.

(10) A utility shall not refuse to consider an application to be invited to tender for or to negotiate the contract if it is made by letter, telegram, telex, facsimile, telephone or any electronic means provided that, in the last 5 cases, it is confirmed by letter despatched before the date fixed by the utility as the last date for the receipt of applications to be invited to tender for or negotiate the contract.

PART IV

QUALIFICATION AND SELECTION OF SUPPLIERS AND CONTRACTORS

Qualification system for suppliers or contractors

17.—(1) A utility may establish and operate a system of qualification of suppliers or contractors if that system complies with the following paragraphs of this regulation.

(2) The system may involve different stages of qualification and shall be based on objective rules and criteria as determined from time to time by the utility using European standards as a reference when they are appropriate.

(3) The rules and criteria shall be made available on request to suppliers or contractors and if so requested any amendment of those rules and criteria shall be sent to them as the amendment is incorporated into the system.

(4) A utility may establish a system of qualification pursuant to which a supplier or contractor may qualify under the system of, or be certified by, another person, and in those circumstances the utility shall inform suppliers and contractors who apply to qualify of the name of that other person.

(5) The utility shall inform applicants for qualification of the success or failure of their application within a reasonable period and, if the decision will take longer than 6 months from the presentation of an application, the utility shall inform the applicant, within 2 months of the application, of the reasons justifying a longer period and of the date by which his application will be accepted or refused.

(6) In determining what rules and criteria are to be met by applicants to qualify under the system and in determining whether a particular applicant does qualify under the system a utility shall not impose conditions of an administrative, technical or financial nature on some suppliers or contractors which are not imposed upon others and shall not require the application of tests or the submission of evidence which duplicates objective evidence already available.

(7) A utility shall inform any applicant whose application to qualify is refused of the decision and the reasons for refusal.

(8) An application may only be refused if the applicant fails to meet the requirements for qualification laid down in accordance with paragraph (2) above.

(9) The utility shall keep a written record of qualified suppliers and contractors which may be divided into categories according to the type of contract for which the qualification is valid.

(10) The utility may cancel the qualification of a supplier or contractor who has qualified under the qualification system only if he does not continue to meet the rules and criteria laid down in accordance with paragraph (2) above.

(11) The utility may not cancel a qualification unless it notifies the supplier or contractor in writing beforehand of its intention and of the reason or reasons justifying the proposed cancellation.

(12) The utility shall send a notice substantially corresponding to the form set out in Part E of Schedule 4 and containing the information relating to the qualification system therein specified to the Official Journal when the system is first established and, if the utility expects to operate the system for more than three years, or if it has operated the system for more than three years, it shall send additional notices annually.

Selection of suppliers and contractors in the restricted or negotiated procedures

18.—(1) A utility using the restricted or the negotiated procedure, with or without a call for competition, shall make the selection of the suppliers or contractors to be invited to tender for or to negotiate the contract on the basis of objective criteria and rules which it determines and which it makes available to suppliers or contractors who request them.

(2) The criteria which a utility uses for deciding not to select a supplier or contractor may include the following, namely that the supplier or contractor—

- (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⁽¹¹⁾, or Article 242 of the Insolvency (Northern Ireland) Order 1989⁽¹²⁾, or in Scotland has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other state;

⁽¹¹⁾ 1986, c. 45.

⁽¹²⁾ S.I. 1989/2405 (N.I.19).

- (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;
- (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 supplier or contractor is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of any part of the United Kingdom or of the member State in which the supplier or contractor is established; or
- (h) is guilty of serious misrepresentation in providing information to the utility.

(3) Without prejudice to the generality of paragraph (1) above the criteria may be based on the need of the utility to reduce the number of suppliers or contractors selected to tender for or to negotiate the contract to a level which is justified by the characteristics of the award procedure and the resources required to complete it.

(4) The utility shall take account of the need to ensure adequate competition in determining the number of persons selected to tender for or to negotiate the contract.

Consortia

19.—(1) In this regulation a “consortium” means two or more persons, at least one of whom is a supplier or contractor, acting jointly for the purpose of being awarded a contract.

(2) A utility 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 contract on the grounds that the consortium has not formed a legal entity for the purpose of tendering for or negotiating the contract; but where a utility awards a contract to a consortium it may, if to do so is justified for the satisfactory performance of the contract, 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 supplier or contractor where the supplier or contractor is a consortium includes a reference to each person who is a member of that consortium.

PART V

THE AWARD OF A CONTRACT

Criteria for the award of a contract

20.—(1) Subject to regulation 21 below, a utility shall award a contract on the basis of the offer which—

- (a) offers the lowest price, or

(b) is the most economically advantageous to the utility.

(2) The criteria which a utility may use to determine that an offer is the most economically advantageous include price, delivery date or period for completion, running costs, cost effectiveness, quality, aesthetic and functional characteristics, technical merit, after sales service and technical assistance, commitments with regard to spare parts and security of supply.

(3) Where a utility intends to award a 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 any contract notice or in the contract documents,

(4) Where a utility awards a 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 the offer meets the minimum requirements of the utility and 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 utility will not take account of offers which offer such variations it shall state that fact in the contract documents.

(5) A utility may not reject a tender on the ground that the tender is based on, or the technical specifications in the tender have been defined by reference to, European specifications (within the meaning of regulation 11(1) above) or to national technical specifications recognised as complying with the essential requirements of Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative procedures in the member States relating to construction products(13).

(6) If an offer for a contract is abnormally low the utility 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, which request may set a reasonable period for reply, and has—

(a) if awarding the contract on the basis of the offer which offers the lowest price, examined the details of all the offers made, taking into account any explanation given to it of the abnormally low offer, before awarding the contract, or

(b) if awarding the 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 utility may take into account explanations which justify the offer on objective grounds including the economy of the construction or production method, the technical solutions suggested by the supplier or contractor or the exceptionally favourable conditions available to the supplier or contractor for the performance of the contract or the originality of the goods or works proposed by the supplier or contractor.

(7) A utility may reject a tender for a contract which is abnormally low owing to the receipt of a state aid within the meaning of article 92 of the Treaty but only if it has consulted the supplier or contractor and the supplier or contractor has not been able to show that the aid in question has been notified to the Commission pursuant to article 93(3) of the Treaty or has received the Commission's approval.

(8) A utility which rejects a tender in accordance with paragraph (7) above shall send a report to the Minister for onward transmission to the Commission.

(9) For the purposes of this regulation “offer” includes a bid by one part of a utility to supply goods or to carry out a work or works for another part of the utility when the former part is invited by the latter part to compete with the offers sought from other persons.

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

Rejection of third country offers

21.—(1) In this regulation an offer of third country origin is an offer to enter a supply contract under which more than 50% of the value of the goods offered originate, as determined in accordance with Council Regulation (EEC) No. 802/68(14), in States with which the Communities have not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings in member States to the markets of those States or in States to which the benefit of the provisions of Council Directive 90/531/EEC(15) has not been extended.

(2) Notwithstanding regulation 20, a utility need not accept an offer of third country origin.

(3) Notwithstanding regulation 20, where an offer of third country origin is equivalent to an offer which is not of third country origin a utility shall not accept the offer of third country origin unless not to accept that offer would oblige the utility to acquire goods having technical characteristics different from those of existing goods or an installation resulting in compatibility, technical difficulties in operation and maintenance or disproportionate costs.

(4) In the case of a contract to be awarded on the basis of the offer which offers the lowest price offers are equivalent for the purposes of paragraph (3) above if their prices are to be treated as equivalent in accordance with paragraph (6) below.

(5) In the case of a contract to be awarded on the basis of the offer which is the most economically advantageous to the utility offers are equivalent for the purposes of paragraph (3) above if their prices are to be treated as equivalent in accordance with paragraph (6) below and if disregarding any difference in price the offer which is not of third country origin is at least as economically advantageous to the utility as the offer of third country origin.

(6) The prices of offers are to be treated as equivalent for the purposes of paragraphs (4) and (5) above if the price of the offer which is not of third country origin is the same as or is not more than 3% greater than the offer of third country origin.

Contract award notice

22.—(1) A utility which has awarded a supply or a works contract (other than one excluded from the application of these Regulations by regulations 6 to 9 above) shall no later than two months after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part F of Schedule 4 and including the information therein specified.

(2) The utility may indicate that any of the information included in paragraphs 6 and 9 of the notice is of a sensitive commercial nature, and request that it not be published.

PART VI

MISCELLANEOUS

Obligations relating to employment protection and working conditions

23. A utility which includes in the contract documents relating to a works contract information as to where a contractor may obtain information about the obligations relating to employment protection and working conditions which will apply to the works to be carried out under the contract, shall request contractors to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

(14) OJ No.L148, 28.6.68, p.1, as amended by Council Regulation (EEC) No.3860/87 (OJ No.L363, 23.12.87, p.30).

(15) OJ No.L297, 29.10.90, p.1.

Sub-contracting

24. A utility may require a supplier or contractor to indicate in his tender what part of the contract if any he intends to sub-contract to another person.

Preservation of records

25.—(1) When these Regulations apply to the seeking of offers in relation to a contract a utility shall keep appropriate information on each such contract sufficient to justify decisions taken in connection with—

- (a) the qualification and selection of suppliers or contractors and the award of contracts;
- (b) the recourse to derogations from the requirement that European specifications be referred to pursuant to regulation 11(4) above; and
- (c) the use of a procedure without a call for competition pursuant to regulation 15 above.

(2) When a utility decides not to apply these Regulations to the seeking of offers in relation to a contract in accordance with regulations 6, 7 and 9 above it shall keep appropriate information on such a contract sufficient to justify that decision.

(3) The information referred to in paragraphs (1) and (2) above shall be preserved for at least four years from the date of the award of the contract.

Statistical and other reports

26.—(1) A utility shall each year by the date notified to it by the Minister send to the Minister a report specifying the aggregate value (estimated if necessary) of the consideration payable under the contracts awarded in the previous year and excluded from the operation of these Regulations by regulation 9 above for each of the following categories of activity—

- (a) the production, transport or distribution of drinking water, hydraulic engineering, irrigation, land drainage or the disposal or treatment of sewage;
- (b) the production, transport or distribution of electricity;
- (c) the transport or distribution of gas or heat;
- (d) the exploration for and extraction of oil or gas;
- (e) the exploration for and extraction of coal or other solid fuels;
- (f) railway services;
- (g) urban railway, tramway, trolleybus or bus services;
- (h) the provision of airport facilities;
- (i) the provision of maritime or inland port or other terminal facilities; and
- (j) the operation of telecommunications networks or the provision of telecommunications services.

(2) A utility when requested shall send to the Minister a report for the purpose of informing the Commission—

- (a) containing such information as the Minister may from time to time require in respect of a particular supply or works contract (including contracts excluded from the application of these Regulations by regulations 6 to 9 above);
- (b) specifying which of its activities it considers are not activities specified in the Part of Schedule 1 in which the utility is specified, or are activities outside the territory of the Communities not involving the physical use of a network or geographical area within the Communities; and

- (c) specifying the categories of goods or works it considers comprise the goods and works which it acquires in order to sell or to hire them to another person, but which it does not have a special or exclusive right to sell or hire and which other persons are free to sell or hire under the same conditions.

(3) A utility may indicate that any of the information included in a report sent to the Minister pursuant to paragraph 2(c) above is of a sensitive commercial nature, and request that it not be published.

The Responsible Minister

27.—(1) Any reference to the Minister in these Regulations shall be deemed to be a reference to the Minister responsible for that utility.

(2) The Minister responsible for a utility shall be the Minister of the Crown whose areas of responsibility are most closely connected with the functions of the utility; and any question as to which Minister of the Crown's areas of responsibility are most closely connected with the functions of a utility shall be determined by the Treasury whose determination shall be final.

(3) The requirement on a utility to send any report in accordance with regulations 7(2), 20(8) and 26 to the Minister 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.

(6) The Minister to whom a report is sent in accordance with regulations 7(2), 20(8) and 26 shall send the report to the Treasury for onward transmission to the Commission.

Official Journal notices

28.—(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⁽¹⁶⁾.

(2) The utility shall retain evidence of the date of despatch to the Official Journal of each notice.

(3) The utility may in exceptional cases request that a contract notice be published within 5 days of the date of despatch, provided that it is sent by electronic mail, telex or facsimile⁽¹⁷⁾.

(4) The utility may publish the information contained in a contract notice in such other way as it thinks fit but it shall not do so until the notice has been despatched in accordance with paragraph (1) above and shall not publish any information other than that contained in the notice.

Confidentiality of Information

29. A utility which makes information available to a supplier or contractor pursuant to these Regulations may impose requirements on him for the purpose of protecting the confidentiality of that information.

⁽¹⁶⁾ 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.

⁽¹⁷⁾ The Office for the Official Publications is required by article 19(3) of Council Directive [90/531/EEC](#) (OJ No. L297, 29.10.90, p.1) to publish notices within 12 days of the date of despatch, and to endeavour to publish contract notices within 5 days of the date of despatch in response to a request pursuant to this paragraph.

PART VII

APPLICATIONS TO THE COURT AND CONCILIATION

Enforcement of obligations

30.—(1) The obligation on a utility to comply with the provisions of these Regulations other than regulations 7(2), 20(8) and 26, and with any enforceable Community obligation in respect of a supply or a works contract (other than one excluded from the application of these Regulations by regulations 6, 7 or 9 above), is a duty owed to suppliers and contractors.

(2) A breach of the duty owed pursuant to paragraph (1) shall not be a criminal offence but any breach of the duty shall be actionable by any supplier or contractor 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 supplier or contractor bringing the proceedings has informed the utility of the breach or apprehended breach of the duty owed to him pursuant to paragraph (1) above by that utility 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 utility in the course of following such a procedure; and
- (b) if satisfied that a decision or action taken by a utility was in breach of the duty owed pursuant to paragraph (1) above—
 - (i) order the setting aside of that decision or action or order the utility to amend any document, or
 - (ii) award damages to a supplier or contractor who has suffered loss or damage as a consequence of the breach, or
 - (iii) do both of those things.

(6) In 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) Where in proceedings under this regulation the Court is satisfied that a supplier or contractor would have had a real chance of being awarded a contract if that chance had not been adversely affected by a breach of the duty owed to him by the utility pursuant to paragraph (1) above the supplier or contractor shall be entitled to damages amounting to his costs in preparing his tender and in participating in the procedure leading to the award of the contract.

(8) Paragraph (7) above shall not affect a claim by a supplier or contractor that he has suffered other loss or damage or that he is entitled to relief other than damages and is without prejudice to the matters on which a supplier or contractor may be required to satisfy the Court in respect of any other such claim.

(9) Notwithstanding sections 21 and 42 of the Crown Proceedings Act 1947⁽¹⁸⁾, in proceedings brought under this regulation against the Crown the Court shall have power to grant an injunction or interdict.

Conciliation

31.—(1) A supplier or contractor who considers that—

- (a) a utility has breached or may breach the duty referred to in regulation 30(1) above, and
- (b) in consequence he has suffered, or risks suffering, loss or damage

and who wishes to use the conciliation procedure provided for in articles 10 and 11 of Council Directive 92/13/EEC⁽¹⁹⁾ shall send a request for the application of the procedure to the Treasury for onward transmission to the Commission.

(2) Neither the request for nor any action taken pursuant to the conciliation procedure referred to in paragraph (1) above shall affect the rights or liabilities of the supplier or contractor requesting it, of the utility in respect of which the request is made, or of any other person.

PART VIII AMENDMENTS

Amendment of the Public Works Contracts Regulations and the Public Supply Contracts Regulations

32.—(1) The Public Works Contracts Regulations 1991⁽²⁰⁾ shall be amended by substituting—

- (a) for paragraphs (a), (b) and (c) of regulation 6 the following paragraphs:
 - “(a) for the purpose of carrying out an activity specified in the second column of Schedule 1 to the Utilities Supply and Works Contracts Regulations 1992, other than an activity specified in paragraphs 2 or 3 thereof;
 - (b) when a contracting authority exercises the activity specified in paragraph 1 of Schedule 1 to the Utilities Supply and Works Contracts Regulations 1992, for the purpose of carrying out an activity specified in paragraph 2 or 3 thereof;”;
- (b) in regulation 10(2)—
 - (i) in subparagraph (a) where it first appears “(3)” for “(4)” and “restricted” for “negotiated”;
 - (ii) in subparagraph (d) “(3)” for “(4)”;
 - (iii) in subparagraph (g) “(4)” for “(5)”;
 - (iv) in subparagraph (h) “(5)” for “(6)”;
- (c) in regulation 12(4) “contractor” for “supplier”;
- (d) in regulation 13—
 - (i) in paragraph (1)(b) “11(7)” for “11(6)”;
 - (ii) in paragraph (2) “2” for “3”;

⁽¹⁸⁾ 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.

⁽¹⁹⁾ OJ No. L76, 23.3.92, p.14.

⁽²⁰⁾ S.I. 1991/2680.

- (e) in regulation 18 “16(1)(b)” for “17(1)(b)”;
 - (f) in regulation 31(6) “paragraph (7)” for “paragraph (6)”;
 - (g) in paragraph 6(a) of Part D of Schedule 2 “requests to participate” for “tenders”.
- (2) The Public Supply Contracts Regulations 1991(21) shall be amended—
- (a) by substituting for paragraphs (a), (b) and (c) of regulation 6 the following paragraphs:
 - “(a) for the purpose of carrying out an activity specified in the second column of Schedule 1 to the Utilities Supply and Works Contracts Regulations 1992 other than an activity specified in paragraph 2 or 3 thereof;
 - (b) when a contracting authority exercises the activity specified in paragraph 1 of Schedule 1 to the Utilities Supply and Works Contracts Regulations 1992 for the purpose of carrying out an activity specified in paragraph 2 or 3 thereof;”
 - (b) by inserting in regulation 10(3)(e), “and not attributable to”, after the words “unforeseeable by”; and
 - (c) by substituting in regulation 26(6) “has” for “had”.

Norman Lamont

Tim Wood

Two of the Lords Commissioners of Her
Majesty’s Treasury

23rd December 1992

SCHEDULE 1

regulation 6

UTILITIES AND ACTIVITIES

Utility	Activity
PART A	
A company holding an appointment as a water undertaker under the Water Industry Act 1991 ⁽²²⁾ .	1. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of drinking water.
A water authority as defined in section 3(1) of the Water (Scotland) Act 1980 ⁽²³⁾	2. Hydraulic engineering, irrigation or land drainage, but only if more than 20% of the total volume of water made available by such activity is intended for the supply of drinking water.
The Department of the Environment for Northern Ireland.	3. The disposal or treatment of sewage.
PART B	
A relevant person not specified in Part C.	4. The supply of drinking water to a network referred to in paragraph 1 above.
Any other person not specified in Part C who supplies drinking water to a network which is referred to in paragraph 1 above and which is provided or operated by a person specified in Part A.	
PART C	
A relevant person other than a public authority who produces drinking water because its consumption is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 1 above.	5. The supply of drinking water to a network referred to in paragraph 1 above but only if the drinking water supplied in the period of 36 months ending at the relevant time as defined in regulation 9(16) above has exceeded 30% of the total produced by the utility in that period.
Any other person who is not a public authority, who produces drinking water because its consumption is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 1 above and which is provided or operated by a person specified in Part A.	
PART D	
A person licensed under section 6 of the Electricity Act 1989 ⁽²⁴⁾ .	6. The provision or operation of a fixed network which provides or will provide a service

⁽²²⁾ 1991 c. 56.⁽²³⁾ 1980 c. 45.⁽²⁴⁾ 1989 c. 29.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Utility	Activity
A person licensed under article 10(1) of the Electricity (Northern Ireland) Order 1992 ⁽²⁵⁾ .	to the public in connection with the production, transport or distribution of electricity.
PART E	
A relevant person not specified in Part F.	7. The supply of electricity to a network referred to in paragraph 6 above.
Any other person not specified in Part F who supplies electricity to a network which is referred to in paragraph 6 above and which is provided or operated by a person specified in Part D.	
PART F	
A relevant person other than a public authority who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network referred to in paragraph 6 above.	8. The supply of electricity to a network referred to in paragraph 6 above but only if the electricity supplied in the period of 36 months ending at the relevant time as defined in regulation 9(16) above has exceeded 30% of the total produced by the utility in that period.
Any other person who is not a public authority, who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 6 above and which is provided or operated by a person specified in Part D.	
PART G	
A public gas supplier as defined in section 7(1) of the Gas Act 1986 ⁽²⁶⁾	9. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of gas.
A person declared to be an undertaker for the supply of gas under article 14(1) of the Gas (Northern Ireland) Order 1977 ⁽²⁷⁾ .	
PART H	
A relevant person not specified in Part I.	10. The supply of gas to a network referred to in paragraph 9 above.
Any other person not specified in Part I who supplies gas to a network which is referred to in paragraph 9 above and which is provided or operated by a person specified in Part G.	
PART I	
A relevant person other than a public authority who produces gas only as the unavoidable	11. The supply of gas to a network referred to in paragraph 9 above but only if the total

⁽²⁵⁾ S.I. 1992/231.

⁽²⁶⁾ 1986 c. 44.

⁽²⁷⁾ S.I. 1977/596.

Utility	Activity
consequence of carrying out an activity not specified in the second column of this Schedule and who supplies gas for the sole purpose of the economic exploitation of the production to a network referred to in paragraph 9 above.	consideration payable in the period of 36 months ending at the relevant time as defined in regulation 9(16) above on account of such supply has exceeded 20% of the total turnover of the utility in that period.
Any other person who is not a public authority, who produces gas only as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies gas for the sole purpose of the economic exploitation of the production to a network which is referred to in paragraph 9 above and which is provided or operated by a person specified in Part G.	
PART J	
A local authority.	12. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat.
A person licensed under section 6(1)(a) of the Electricity Act 1989(28) whose licence includes the provisions referred to in section 10(3) of that Act.	
The Northern Ireland Housing Executive.	
PART K	
A relevant person not specified in Part L.	13. The supply of heat to a network referred to in paragraph 12 above.
Any other person not specified in Part L who supplies heat to a network which is referred to in paragraph 12 above and which is provided or operated by a person specified in Part J.	
PART L	
A relevant person other than a public authority who produces heat as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies heat for the sole purpose of the economic exploitation of the production to a network referred to in paragraph 12 above.	14. The supply of heat to a network referred to in paragraph 12 above but only if the total consideration payable in the 36 months ending at the relevant time as defined in regulation 9(16) above on account of such supply has exceeded 20% of the total turnover of the utility in that period.
Any other person who is not a public authority, who produces heat only as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies heat for the sole purpose of the economic exploitation of the production to a network which is referred to in paragraph 12	

(28) 1989 c. 29.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Utility	Activity
above and which is provided or operated by a person specified in Part J.	
PART M	
A person licensed under the Petroleum (Production) Act 1934 (29)	15. The exploitation of a geographical area for the purpose of exploring for or extracting oil or gas.
A person licensed under the Petroleum (Production) Act (Northern Ireland) 1964 (30) .	
PART N	
The British Coal Corporation.	16. The exploitation of a geographical area for the purposes of exploring for or extracting coal or other solid fuels.
A person licensed by the British Coal Corporation under the Coal Industry (Nationalisation) Act 1946 (31) .	
The Department of Economic Development (Northern Ireland).	
A person who holds a prospecting licence, a mining lease, a mining licence or a mining permission as defined by section 57(1) of the Mineral Development Act (Northern Ireland) 1969 (32) .	
PART O	
A local authority.	17. The exploitation of a geographical area for the purpose of providing airport or other terminal facilities to carriers by air.
An airport operator within the meaning of the Airports Act 1986 (33) who has the management of an airport subject to economic regulation under Part IV of that Act.	
Highland and Islands Airports Limited.	
A subsidiary of the Northern Ireland Transport Holding Company within the meaning of the Aerodromes Act (Northern Ireland) 1971 (34) .	
An aerodrome undertaking within the meaning of the Aerodromes Act (Northern Ireland) 1971.	
Any other relevant person.	
<hr/> <p>(29) 1934 c. 36. (30) 1964 c. 28(N.I.). (31) 1946 c. 59. (32) 1969 c. 35(N.I.). (33) 1986 c. 31. (34) 1971 c. 15(N.I.)</p>	

Utility	Activity
PART P	
A harbour authority within the meaning of section 57 of the Harbours Act 1964 (35) .	18. The exploitation of a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea or inland waterway.
British Waterways Board.	
A local authority.	
A harbour authority as defined by section 38(1) of the Harbours Act (Northern Ireland) 1970 (36) .	
Any other relevant person.	
PART Q	
British Railways Board.	19. The operation of a network providing a service to the public in the field of transport by railway.
A subsidiary of British Railways Board within the meaning of section 25 of the Transport Act 1962 (37) .	
Eurotunnel plc.	
Northern Ireland Transport Holding Company.	
Northern Ireland Railways Company Limited.	
London Regional Transport.	
London Underground Limited.	
Docklands Light Railway Limited.	
Strathclyde Passenger Transport Executive.	
Greater Manchester Passenger Transport Executive.	
Greater Manchester Metro Limited.	
Tyne and Wear Passenger Transport Executive.	
Brighton Borough Council.	
South Yorkshire Passenger Transport Executive.	

(35) 1964 c. 40.

(36) 1970 c. 1(N.I.).

(37) 1962 c. 46.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Utility	Activity
South Yorkshire Supertram (No.2) Limited.	
Any other relevant person.	
PART R	
Greater Manchester Passenger Transport Executive.	20. The operation of a network providing a service to the public in the field of transport by automated systems, tramway, trolleybus, or cable.
Greater Manchester Metro Limited.	
Blackpool Transport Services Limited.	
Aberconwy Borough Council.	
South Yorkshire Passenger Transport Executive.	
South Yorkshire Supertram (No.2) Limited.	
Any other relevant person.	
PART S	
London Regional Transport.	21. The operation of a network providing a service to the public in the field of transport by bus in a geographical area in which other persons are not free to provide the service under the same conditions as the utility.
A subsidiary of London Regional Transport within the meaning of section 36 of the Transport Act 1985 (38) .	
A person who provides a London bus service as defined in section 34(2)(b) of the Transport Act 1985 in pursuance of an agreement entered into by London Regional Transport by virtue of section 3(2) of the London Regional Transport Act 1984 (39) .	
Northern Ireland Transport Holding Company.	
A person who holds a road service licence under section 4(1) of the Transport Act (Northern Ireland) 1967 (40) which authorises him to provide a regular service within the meaning of that licence.	
Any other relevant person.	
PART T	

(38) 1985 c. 67.

(39) 1984 c. 32.

(40) 1967 c. 37(N.I.).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Utility	Activity
A public telecommunications operator under the Telecommunications Act 1984(41).	<p>22. The provision or operation of a public telecommunications network.</p> <p>23. The provision of one or more public telecommunications services.</p>

In this Schedule—

“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(42);

“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(42);

“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 voting power attached to such majority, 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
- (c) not a public authority or a public undertaking and has as one of its activities an activity specified in the second column of this Schedule 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 authorisations granted by a competent authority when the requirement for the authorisation has the effect of reserving for one or more persons the exploitation of an activity specified to in the second column of this Schedule, and in particular a person shall 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 this Schedule 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.

SCHEDULE 2

regulation 7

EXCLUDED PUBLIC TELECOMMUNICATIONS SERVICES

Utility	Services
PART A	
Public telecommunications operators under the Telecommunications Act 1984(43) other than	1. All public telecommunications services.

(41) 1984 c. 12.

(42) S.I. 1991/2680.

(42) S.I. 1991/2680.

(43) 1984 c. 12.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Utility	Services
British Telecommunications plc and Kingston Communications (Hull) plc.	
PART B	
British Telecommunications plc.	2. All public telecommunications services, other than the following services when they are provided within the geographical area for which the provider is licensed as a public telecommunications operator: basic voice telephony services, basic data transmission services, the provision of private leased circuits and maritime services.
Kingston Communications (Hull) plc.	

In this Schedule—

- “basic data transmission services” means telecommunications services consisting of the conveyance of messages other than two-way live speech telephone calls, including only such switching, processing, data storage or protocol conversion as is necessary for the conveyance of those messages in real time;
- “basic voice telephony services” means telecommunications services consisting of the conveyance of messages in the form of two-way live speech telephone calls, including only such switching, processing, data storage or protocol conversion as is necessary for the conveyance of those messages in real time;
- “maritime services” means two-way telecommunications services including voice telephony and data transmission services consisting of the transmission and reception of messages conveyed between seagoing vessels and hovercraft;
- “private leased circuit” means a communication facility which is—
 - (a) provided by one or more public telecommunications networks,
 - (b) for the conveyance of messages between points, all of which are points of connection between public telecommunications networks and other telecommunications networks,
 - (c) made available to a particular person or particular persons,
 - (d) such that all of the messages transmitted at any of the points referred to in subparagraph (b) above are received at every other such point, and
 - (e) such that the points mentioned in subparagraph (a) above are fixed by the way in which the facility is installed and cannot otherwise be selected by persons or telecommunications apparatus sending messages by means of the facility;
- “public telecommunications networks” and “public telecommunications services” have the meanings ascribed to them by regulation 2(1); and
- “public telecommunications operator” has the meaning given by section 9(3) of the Telecommunications Act 1984.

SCHEDULE 3

Regulation 2(1)

ACTIVITIES CONSTITUTING WORKS

Classes	Groups	Subgroups and items	Descriptions
50			BUILDING AND CIVIL ENGINEERING
	500		General building and civil engineering work (without any particular specialisation) and demolition work

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Classes	Groups	Subgroups and items	Descriptions
		500.1	General building and civil engineering work (without any particular specialisation)
		500.2	Demolition work
	501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
		501.1	General building contractors
		501.2	Roofing
		501.3	Construction of chimneys, kilns and furnaces
		501.4	Waterproofing and damp-proofing
		501.5	Restoration and maintenance of outside walls (repainting, cleaning, etc.)
		501.6	Erection and dismantlement of scaffolding
		501.7	Other specialised activities relating to construction work (including carpentry)
	502		Civil engineering: construction of roads, bridges, railways, etc.
		502.1	General civil engineering work
		502.2	Earth-moving (navvying)
		502.3	Construction of bridges, tunnels and shafts, drilling
		502.4	Hydraulic engineering (rivers, canals, harbours, flows, locks and dams)

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Classes	Groups	Subgroups and items	Descriptions
		502.5	Road-building (including specialised construction of airports and runways)
		502.6	Specialised construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
		502.7	Specialised activities in other areas of civil engineering
	503		Installation (fittings and fixtures)
		503.1	General installation work
		503.2	Gas fitting and plumbing, and the installation of sanitary equipment
		503.3	Installation of heating and ventilating apparatus (central heating, air conditioning, ventilation)
		503.4	Sound and heat insulation, insulation against vibration
		503.5	Electrical fittings
		503.6	Installation of aerials, lightning conductors, telephones, etc.
	504		Building completion work
		504.1	General building completion work
		504.2	Plastering
		504.3	Joinery, primarily engaged in on the site assembly and/or installation (including

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Classes	Groups	Subgroups and items	Descriptions
			the laying of parquet flooring)
		504.4	Painting, glazing, paper hanging
		504.5	Tiling and otherwise covering floors and walls
		504.6	Other building completion work (putting in fireplaces, etc.)

SCHEDULE 4

Regulations 13(1), 14(2)(b), 17(12) and 22(1)

FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL JOURNAL

PART A

PERIODIC INDICATIVE NOTICE

For supply contracts:

A.—(1) The name, address and telephone, telegraphic, telex and facsimile numbers of the utility and of the service from which additional information may be obtained.

(2) For each type of goods or services the total quantity or value to be supplied under the contract(s).

(a) (3) (a) Estimated date of the commencement of the procedures leading to the award of the contract(s) (if known).

(b) Type of award procedure to be used.

(4) Other information (for example, indicate if a call for competition will be published later).

(5) Date of despatch of the notice.

For works contracts

B.—(1) The name, address and telephone, telegraphic, telex and facsimile numbers of the utility.

(a) (2) (a) The site.

(b) The nature and extent of the services to be provided, the main characteristics of the work or where relevant of any lots by reference to the work.

(c) An estimate of the cost of the service to be provided.

(a) (3) (a) Type of award procedure to be used.

(b) Estimated date for initiating the award procedures in respect of the contract or contracts.

(c) Estimated date for the start of the work.

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- (d) Estimated time-table for completion of the work.
- (4) Terms of financing of the work and of price revision.
- (5) Other information (for example, indicate if a call for competition will be published later).
- (6) Date of despatch of the notice.

PART B

OPEN PROCEDURES NOTICE

1. The name, address and telephone, telegraphic, telex and facsimile numbers of the utility.
2. Nature of the contract (supply or works; where applicable, state if it is a framework agreement⁽⁴⁴⁾)
 - (a) (a) Place of delivery, or site.
 - (b) Nature and quantity of the goods to be supplied; or the nature and extent of the services to be provided and general nature of the work.
 - (c) Indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.
 - (d) Authorisation to submit variants.
 - (e) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with regulation 11(4).
5. Time limits for delivery or completion.
 - (a) (a) Name and address from which the contract documents and additional documents may be requested.
 - (b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.
 - (a) (a) The final date for receipt of tenders.
 - (b) The address to which they must be sent.
 - (c) The language or languages in which they must be drawn up.
 - (a) (a) Where applicable, the persons authorised to be present at the opening of tenders.
 - (b) The date, hour and place of such opening.
9. Any deposits and guarantees required.
10. Main terms concerning financing and payment and/or reference to the provisions in which these are contained.
11. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
12. Minimum standards of economic and financial standing and technical capacity required of the supplier or contractor to whom the contract is awarded.
13. Period during which the tenderer is bound to keep open his tender.

⁽⁴⁴⁾ In accordance with regulation 10.

14. The 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.

15. Other information.

16. Where applicable, the date of publication in the Official Journal of the European Communities of the periodic indicative notice which refers to the contract.

17. Date of despatch of the notice.

PART C

RESTRICTED PROCEDURES NOTICE

1. The name, address and telephone, telegraphic, telex and facsimile numbers of the utility.

2. Nature of the contract (supply or works; where applicable, state if it is a framework agreement⁽⁴⁵⁾).

(a) (a) Place of delivery, or site.

(b) Nature and quantity of the goods to be supplied; or the nature and extent of the services to be provided and general nature of the work.

(c) Indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.

(d) Authorisation to submit variants.

(e) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

4. Derogation from the use of European specifications, in accordance with regulation 11(4).

5. Time limits for delivery or completion.

6. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.

(a) (a) The final date for receipt of requests to participate.

(b) The address to which they must be sent.

(c) The language or languages in which they must be drawn up.

8. The final date for despatch of invitations to tender.

9. Any deposits and guarantees required.

10. Main terms concerning financing and payment and/or reference to the provisions in which these are contained.

11. Information concerning the supplier's or contractor's personal position and minimum standards of economic and financial standing and technical capacity required of the supplier or contractor to whom the contract is awarded.

12. The criteria for the award of the contract where they are not mentioned in the invitation to tender.

13. Other information.

⁽⁴⁵⁾ In accordance with regulation 10.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

14. Where applicable, the date of publication in the Official Journal of the European Communities of the periodic indicative notice which refers to the contract.

15. Date of despatch of the notice.

PART D

NEGOTIATED PROCEDURES NOTICE

1. The name, address and telephone, telegraphic, telex and facsimile numbers of the utility.
2. Nature of the contract (supply or works; where applicable, state if it is a framework agreement⁽⁴⁶⁾).
 - (a) (a) Place of delivery, or site.
 - (b) Nature and quantity of the goods to be supplied; or the nature and extent of the services to be provided and general nature of the work.
 - (c) Indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.
 - (d) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Derogation from the use of European specifications, in accordance with Regulation 11(4).
5. Time limit for delivery or completion.
6. Where applicable, the legal form to be taken by the grouping of suppliers or contractors to whom the contract is awarded.
 - (a) (a) The final date for receipt of requests to participate.
 - (b) The address to which they must be sent.
 - (c) The language or languages in which they must be drawn up.
8. Any deposits and guarantees required.
9. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
10. Information concerning the supplier's or contractor's personal position and minimum standards of economic and financial standing and technical capacity required of the supplier or contractor to whom the contract is awarded.
11. Where applicable, the names and addresses of suppliers or contractors already selected by the utility.
12. Where applicable, date(s) of previous publications in the Official Journal of the European Communities.
13. Other information.
14. Where applicable, the date of publication in the Official Journal of the European Communities of the periodic indicative notice which refers to the contract.
15. Date of despatch of the notice.

⁽⁴⁶⁾ In accordance with regulation 10.

PART E

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. The name, address and telephone, telegraphic, telex and facsimile numbers of the utility.
2. Purpose of the qualification system.
3. Address where the rules concerning the qualification system can be obtained (if different from the address mentioned under 1.)
4. Where applicable, duration of the qualification system.

PART F

CONTRACT AWARD NOTICE

Information for publication in the Official Journal of the European Communities

- I.**—(1) Name and address of the utility.
- (2) Nature of the contract (supply or works; where applicable, state if it is a framework agreement⁽⁴⁷⁾).
- (3) At least a summary indication of the nature of the goods, works or services provided.
- (a) (4) (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic indicative notice; contract notice).
- (b) Date of publication of the notice in the Official Journal of the European Communities.
- (c) In the case of contracts awarded without a prior call for competition, indication of the relevant sub-paragraph of regulation 15(1) relied upon.
- (5) Award procedure (open, restricted or negotiated).
- (6) Number of tenders received.
- (7) Date of award of the contract.
- (8) Price paid for bargain purchases under regulation 15(1)(j).
- (9) Name and address of successful supplier(s) or contractor(s).
- (10) State, where applicable, whether the contract has been, or may be, sub-contracted.
- (11) Optional information:
- value and share of the contract which may be sub-contracted to third parties,
 - award criteria,
 - price paid (or range of prices).

Information not intended for publication

- II.**—(12) Number of contracts awarded (where an award has been split between more than one supplier).
- (13) Value of each contract awarded.
- (14) Country of origin of the product or services (EEC origin or non-EEC origin; if the latter, broken down by third country).

⁽⁴⁷⁾ In accordance with regulation 10.

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(15) Was recourse made to the exceptions to the use of European specifications provided for under regulation 11(4). If so, which?

(16) Which award criteria was used (most economically advantageous; lowest price)?

(17) Was the contract awarded to a bidder who submitted a variant, in accordance with regulation 20(4)?

(18) Were any tenders excluded on the grounds that they were abnormally low, in accordance with regulation 20(6) and (7).

(19) Date of despatch of the notice.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement in its entirety Council Directive [90/531/EEC](#) (OJ No.L297,29.10.90,p.1) concerning the co-ordination of procedures for the award of supply and works contracts by certain entities operating in the water, energy, transport and telecommunications sectors. These entities are specified in Schedule 1, and in the Regulations are called “utilities” (regulation 3).

The Regulations apply when utilities are seeking offers in relation to certain contracts for the purchase or hire of goods called in the Regulations “supply contracts” (regulation 2(1) and 5) and when they are seeking offers in relation to certain contracts providing for, or engaging a person to procure, the carrying out or the design and carrying out of certain building and engineering works called in the Regulations “works contracts” (regulations 2(1) and 5). They deal in particular with the treatment to be accorded to suppliers or contractors or potential suppliers or contractors who are nationals of and established in member States (regulation 4). Certain contracts are excluded from the application of the Regulations, principally where the contract is not for the purpose of carrying out an activity specified in the Part of Schedule 1 in which the utility is specified, where the contract is for the purpose of carrying out an activity outside the territory of the Communities, contracts for resale, secret contracts, contracts connected with international agreements (regulation 6), certain contracts awarded by utilities operating in the telecommunications sector (regulation 7 and Schedule 2) and those contracts where the value of the contract is beneath the threshold for coverage (regulation 9). Certain contracts awarded by utilities operating in the energy sector may be exempt from the detailed rules of the Regulations, in which case the utility must comply with the principles of non-discrimination and competitive procurement in seeking offers in relation to them (regulation 8).

The principal requirement of the Regulations is that, in seeking offers in relation to a supply or a works contract, a utility 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 utility may submit tenders; and the negotiated procedure whereby the utility negotiates the terms of the contract with one or more persons selected by it (regulation 12).

The utility is required to publicise the supply or works contracts which it expects to award in the Official Journal at least once a year (regulation 13) and again when it starts the procedure leading to the award (regulation 14), although this latter requirement is dispensed with in certain cases (regulations 14 and 15). The Regulations permit the operation of a system of qualification of suppliers or contractors, from which a utility may select suppliers or contractors to tender for

or negotiate a contract without advertisement at the start of the award procedure. In this case the existence of the qualification system must be advertised (regulation 17).

The form of the different advertisements and the information which it has to contain in relation to the proposed contract is specified in Schedule 4. If the notice is also to be published in the press it must be limited to the information published in the Official Journal (regulation 28).

The various procedures also lay down the time to be allowed for the response by potential suppliers or contractors to the invitations and for obtaining the relevant documents (regulation 16). The Regulations also specify the matters to which the utility may have regard in excluding tenders from suppliers or contractors who are regarded as ineligible or in selecting suppliers or contractors to tender for or to negotiate the contract (regulation 18).

The utility is required to award a supply or works contract 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 20).

There are various other requirements in the Regulations. The most important is the requirement that where the utility wishes to lay down technical specifications which the goods or materials to be purchased or hired or the work or works to be carried out under the contract 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. 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 of a specific make or source or to a particular process with the effect of favouring or eliminating particular suppliers or contractors (regulation 11). A utility is permitted to advertise an arrangement which establishes the terms under which suppliers or contractors will enter supply or works contracts with it over a period of time, in which case it need not advertise the supply and works contracts (regulation 10). In certain circumstances a utility may, and in other limited circumstances must, reject an offer for a supply contract if more than 50% of the value of the goods are goods which originate in States with which the Communities have not concluded an agreement ensuring comparable and effective access to markets for undertakings in member States (regulation 21). Utilities are required to publicise in the Official Journal information about the supply and works contracts they have awarded (regulation 22). The utilities are required to preserve relevant records, and to submit various reports to the responsible Minister (regulations 25 and 26).

The Regulations also implement Council Directive [92/13/EEC](#) (OJ No. L76, 23.3.92,p.14) concerning the co-ordination of laws, regulations and administrative provisions relating to the application of Community rules on the procurement of entities operating in the water, energy, transport and telecommunications sectors. They provide that the obligation on a utility to comply with the Regulations, and with any enforceable Community obligation in relation to the award of a supply or works contract, is a duty owed to suppliers and contractors. A breach of the duty is not a criminal offence, but is actionable by a supplier or contractor. 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.

Finally, the Regulations amend the Public Works Contracts Regulations 1991 and the Public Supply Contracts Regulations 1991 to ensure that not more than one set of Regulations applies to any contract.