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STATUTORY INSTRUMENTS

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**2016 No. 274**

**The Utilities Contracts Regulations 2016**

**PART 2**

**RULES APPLICABLE TO CONTRACTS**

**CHAPTER 1**

**Procedures**

**Use of the negotiated procedure without prior call for competition**

**50.**—(1) Utilities may use the negotiated procedure without prior call for competition in the following cases—

- (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to a procedure with a prior call for competition, provided that the initial conditions of the contract are not substantially altered;
- (b) where a contract is purely for the purpose of research, experiment, study or development and not for the purpose of securing a profit or of recovering research and development costs, and insofar as the award of such contract does not prejudice the competitive award of subsequent contracts which do seek, in particular, those ends;
- (c) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons—
  - (i) the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance;
  - (ii) competition is absent for technical reasons;
  - (iii) the protection of exclusive rights, including intellectual property rights, but only in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
- (d) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the utility, the time limits laid down for open procedures, restricted procedures and negotiated procedures with prior call for competition cannot be complied with;
- (e) in the case of supply contracts for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the utility to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
- (f) for new works or services consisting in the repetition of similar works or services assigned to the contractor to which the same utility awarded an earlier contract, provided that

such works or services conform to a basic project for which a first contract was awarded following a procedure in accordance with regulation 44(1) and (2);

- (g) for supplies quoted and purchased on a commodity market;
  - (h) for bargain purchases, where it is possible to procure supplies by taking advantage of a particularly advantageous opportunity available for a very short time at a price considerably lower than normal market prices;
  - (i) for purchases of supplies or services under particularly advantageous conditions from either a supplier which is definitively winding up its business activities or the liquidator in an insolvency procedure, an arrangement with creditors or a similar procedure under national laws or regulations;
  - (j) where the service contract concerned—
    - (i) follows a design contest organised in accordance with these Regulations, and
    - (ii) is to be awarded, under the rules provided for in the design contest, to the winner or to one of the winners of that contest, provided that all the winners are invited to participate in the negotiations.
- (2) For the purposes of paragraph (1)(a)—
- (a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the utility's needs and requirements as specified in the procurement documents;
  - (b) a request for participation shall be considered not to be suitable where the economic operator concerned—
    - (i) is to be or may be excluded in accordance with regulation 78(1) or 80(1), or
    - (ii) does not meet the selection criteria.
- (3) For the purposes of paragraph (1)(d), the circumstances invoked to justify extreme urgency must not in any event be attributable to the utility.
- (4) For the purposes of paragraph (1)(f)—
- (a) the basic project shall indicate the extent of the possible additional works or services and the conditions under which they will be awarded;
  - (b) as soon as the first contract is put up for tender, the possible use of the procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the utilities when they apply regulations 16 and 17.