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STATUTORY INSTRUMENTS

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**2016 No. 274**

**The Utilities Contracts Regulations 2016**

PART 1

GENERAL

CHAPTER 1

CITATION, COMMENCEMENT, EXTENT, DEFINITIONS AND SUBJECT-MATTER

**Mixed procurement covering the same activity**

6.—(1) In the case of mixed contracts which have as their subject-matter different types of procurement all of which are covered by these Regulations—

(a) contracts which have as their subject-matter two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject-matter of the contract in question; and

(b) in the case of—

(i) mixed contracts consisting partly of services to which Chapter 1 of Part 3 applies and partly of other services, or

(ii) mixed contracts consisting partly of services and partly of supplies,

the main subject-matter shall be determined according to which of the estimated values of the respective services, or of the respective services and supplies is the highest.

(2) In the case of contracts which have as their subject-matter procurement covered by these Regulations and procurement not covered by these Regulations—

(a) where the different parts of a given contract are objectively separable—

(i) utilities may choose to award separate contracts for the separate parts or to award a single contract;

(ii) where utilities choose to award separate contracts for the separate parts, the decision as to which legal regime applies to any one of such separate contracts shall be taken on the basis of the characteristics of the separate part concerned; and

(iii) where utilities choose to award a single contract, these Regulations apply to the ensuing mixed contract, irrespective of—

(aa) the value of the parts that would otherwise fall under a different legal regime, and

(bb) which legal regime those parts would otherwise have been subject to;

(iv) where the decision is taken to award a single contract then that mixed contract will, where it contains elements of supply, works and service contracts and of concessions, be awarded in accordance with these Regulations, provided that the estimated value of the part of the contract which constitutes a contract covered by these Regulations,

calculated in accordance with regulation 17, is equal to or greater than the relevant threshold mentioned in regulation 16.

- (b) where the different parts of a given contract are objectively not separable, the applicable legal regime shall be determined on the basis of the main subject-matter of that contract;
- (3) But where part of a given contract is covered by Article 346 of TFEU or the Defence and Security Regulations, regulation 25 applies instead of paragraph (1) or (2).