

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

1977-09

**Revoked
Subsidiary
1996/005**

Regulations made under section 75 of the Public Finance (Control and Audit) Act.

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

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ARRANGEMENT OF REGULATIONS.

Regulation

PART I GENERAL

1. Title and commencement.
2. Interpretation.
3. Contracting authorities.
4. Services providers.
5. Application of these regulations.
6. General Exclusions.
7. Thresholds.

PART II TECHNICAL SPECIFICATIONS

8. Technical specifications in contract documents.

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996 **PART III** **PROCEDURES LEADING TO THE AWARD OF A PUBLIC** **SERVICES CONTRACT**

9. Prior information notices.
10. Selection of contract award procedure.
11. The open procedure.
12. The restricted procedure.
13. The negotiated procedure.

PART IV **SELECTION OF SERVICES PROVIDERS**

14. Criteria for rejection of services providers.
15. Information as to economic and financial standing.
16. Information as to ability and technical capacity.
17. Supplementary information
18. Official lists of recognised services providers
19. Consortia
20. Corporations

PART V **THE AWARD OF A PUBLIC SERVICES CONTRACT**

21. Criteria for the award of a public services contract
22. Contract award notice
23. Information about contract award procedure

PART VI **MISCELLANEOUS**

24. Design contests
25. Subsidised public services contracts
26. Obligations relating to employment protection and working conditions
27. Statistical and other reports
28. Responsibility for obtaining and forwarding reports and information.
29. Publication of notices
30. Confidentiality of information
31. Sub-contracting
32. Enforcement of obligations.

SCHEDULE 1 **CATEGORIES OF SERVICES**

SCHEDULE 2 **FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL** **JOURNAL**

PART I
GENERAL

Title and commencement.

1. These Regulations may be cited as the Public Services Contracts Regulations 1996 and shall come into effect on the 11th day of January 1996.

Interpretation.

2. (1) In these regulations, unless the context shall otherwise require, —

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

“CPC” stands for the Central Product Classification of the United Nations;

“contract documents” mean the invitation to tender for or to negotiate the contract, the proposed conditions of contract, the specifications or descriptions of the services required by the contracting authority and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with regulation 11(2), 12(2) or 13(2);

“contracting authority” has the meaning given to it in regulation 3;

“design contest” means a competition particularly in the fields of planning, architecture, civil engineering and data processing —

- (a) which is conducted by a contracting authority and in which it invites the entry of plans and designs;
- (b) under the rules of which the plans or designs will be judged by a jury;
- (c) under which prizes may or may not be awarded; and
- (d) which enables the contracting authority to acquire the use of ownership of plans or designs selected by the jury;

“the Directive” means Council Directive 92/50/EEC relating to the co-ordination of procedures for the award of public service contracts;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

“ECU” means the European Currency Unit as defined in Council Regulation (EEC) NO 3180/78;

“established” has the same meaning as it has for the purposes of the Community Treaties;

“financial year” means the period of 12 months ending on 30th June in any year or, in relation to any person whose accounts are prepared in respect of a different 12 month period, that period of 12 months;

“national of a relevant State” means, in the case of a person who is not an individual, a person formed in accordance with the laws of a relevant State and which has its registered office, central administration or principal place of business in a relevant State;

“negotiated procedure” means a procedure leading to the award of a contract whereby the contracting authority negotiates the terms of the contract with one or more persons selected by it;

“Official Journal” means the Official Journal of the European Communities;

“open procedures” means a procedure leading to the award of a contract whereby all interested persons may tender for the contract;

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 9;

“public services contract” means a contract in writing for consideration (whatever the nature of the consideration) under which a contracting authority engages a person to provide services but does not include —

- (a) a contract of employment or other contract of service;
- (b) a public works contract within the meaning of the Public Works Regulations 1996;
- (c) a public supply contract within the meaning of the Public Supply Regulations 1996;
- (d) a contract under which a contracting authority engages a person to provide services to the public lying within its responsibility and under which the consideration given by the contracting authority consists of or includes the right to exploit the provision of the services;

Public Finance (Control and Audit)

1977-09

Revoked
Subsidiary
1996/005

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

“relevant State” means a member State, Bulgaria, Romania, Iceland, Norway and Liechtenstein;

“restricted procedure” means a procedure leading to the award of a contract whereby only persons selected by the contracting authority may submit tenders for the contract;

“services provider” has the meaning given to it in regulation 4; and

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act.

(2) For the purpose of these regulations —

- (a) “a Part A services contract” is a contract under which services specified in Part A of Schedule I are to be provided;
- (b) “a Part B services contract” is a contract under which services specified in Part B of Schedule I are to be provided;

and, where services specified in both Parts A and B are to be provided under a single contract, then —

- (c) the contract shall be treated as a Part A services contract if the value of the consideration attributable to the services specified in Part A is greater than that attributable to those specified in Part B; and
- (d) the contract shall be treated as a Part B services contract if the value of the consideration attributable to the services specified in Part B is equal to or greater than that attributable to those specified in Part A.

(3) The value in the currency of any relevant 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 the Directive as published from time to time in the Official Journal.

(4) 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 shall include 2 working days;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (c) within a period and the last day of that period is not a working day, the period shall include the following working day.

Contracting authorities.

3. For the purposes of these regulations each of the following is a “contracting authority” —

- (a) a Government Department;
- (b) the House of Assembly,
- (c) a body governed by public law as defined in Article 1 of the Directive.

Services providers.

4. (1) For the purposes of these regulations a “services provider” means a person —

- (a) who sought, or who seeks, or who would have wished—
 - (i) to be the person to whom a public services contract is awarded, or
 - (ii) to participate in a design contest, and
- (b) who is a national of and established in a relevant State.

(2) Where these regulations apply a contracting authority shall not treat a person who is not a national of and established in a relevant State more favourably than one who is.

Application of these regulations.

5. (1) Whenever a contracting authority seeks offers in relation to a proposed Part A services contract other than one excluded by virtue of regulation 6 or 7, these regulations apply in their entirety.

(2) Whenever a contracting authority seeks offers in relation to a proposed Part B services contract other than one excluded by virtue of regulation 6 or 7, Part I (General) and Part VII (Applications to the court) apply but only the following provisions in Parts II to VI apply, that is to say—

- (a) regulation 8 (Technical specifications in contract documents),
- (b) regulation 22 (Contract award notices),

- (c) regulation 27 (2) (Statistical and other reports),
- (d) regulation 28 (Responsibility for obtaining reports), and
- (e) regulation 29 (Publication of notices).

General Exclusions.

6. These regulations shall not apply to the seeking of offers in relation to a proposed public services contract —

- (a) for the acquisition of land, including buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- (b) for the acquisition, development, production or co-production of programme material for radio or television by a broadcaster or for the purchase of broadcasting time;
- (c) for voice telephony, telex, radiotelephony, paging or satellite services;
- (d) for arbitration or conciliation services;
- (e) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments;
- (f) for central banking services;
- (g) for research and development services unless —
 - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and
 - (ii) the services are to be wholly paid for by the contracting authority;
- (h) to which the provisions of Article 223 of the EEC Treaty apply;
- (j) which is classified as secret or where the carrying out of the services under it shall be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of the United Kingdom or when the protection of the basic interests of the security of the United Kingdom or of Gibraltar as a dependant territory of the United Kingdom require it;

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (k) 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 relevant State are parties and it provides for the provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement;
 - (ii) pursuant to an international agreement to which the United Kingdom is a party 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; or
- (l) under which services are to be provided by another contracting authority or by a person which is a contracting authority in a member State for the purposes of the Directive, because that contracting authority or person has an exclusive right —
 - (i) to provide the services, or
 - (ii) which is necessary for the provision of the services, pursuant to any published law, regulation or administrative provision, which is compatible with the EEC Treaty.

Thresholds.

7. (1) These regulations shall not apply to the seeking of offers in relation to a proposed public services contract where the estimated value of the contract at the relevant time is less than 200,000 ECU.

(2) Subject to sub-regulations (3) to (11), the estimated value for the purposes of sub-regulation (1) of a public services contract shall be the value of the consideration which the contracting authority expects to give under the contract.

(3) In determining the value of the consideration which the contracting authority expects to give under a public services contract it shall, where appropriate, take account of —

- (a) the premium payable for insurance services,

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

**Revoked
Subsidiary
1996/005**

- (b) the fees, commissions or other remuneration payable for banking and financial services, and
- (c) the fees or commissions payable for design services.

(4) Subject to sub-regulations (5) and (8), where a contracting authority has a single requirement for services and a number of public services contracts have been entered into to fulfil that requirement the estimated value for the purposes of sub-regulation (1) of each public services contract shall be the aggregate of the value of the consideration which the contracting authority expects to give under each of those contracts.

(5) Sub-regulation (4) shall not apply to any public services contract (unless the contracting authority chooses to apply that sub-regulation to that contract) if that contract has an estimated value (calculated in accordance with sub-regulation (2)) of less than 80,000 ECU and the aggregate value of that contract and of any other contract in respect of which the contracting authority takes advantage of the disapplication of sub-regulation (4) by virtue of this sub-regulation is less than 20 per cent of the aggregate of the value of the consideration which the contracting authority has given or expects to give under all the contracts entered or to be entered into to fulfil the requirement.

(6) Subject to sub-regulation (8), where a contracting authority has a requirement over a period for services of the type to be provided under the public services contract and for that purpose enters into —

- (a) a series of contracts, or
- (b) a contract which under its terms is renewable,

the estimated value of the contract for the purposes of sub-regulation (1) shall be the amount calculated under sub-regulation (7).

(7) The contracting authority shall calculate the amount referred to in sub-regulation (6) either —

- (a) by taking the aggregate of the value of the consideration given by the contracting authority under public services contracts which have similar characteristics and which were for the provision of services of the type to be provided under the contract during its last financial year ending before, or during, the period of 12 months ending immediately before the relevant time and by adjusting that amount to take account of any expected changes in the quantity and cost of the services in the period of 12 months commencing with the relevant time, or

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(b) by estimating the aggregate of the value of the consideration which the contracting authority expects to give under such contracts which have similar characteristics and which are for the provision of services of the type to be provided under the contract during the period of 12 months from the first date on which the services will be performed or, where the contract is for a definite term of more than 12 months, during the term of the contract.

(8) Notwithstanding sub-regulations (4) and (6), when the services to be provided under the contract are required for the sole purpose of a discrete operational unit within the organisation of the contracting authority and —

- (a) the decision whether to enter the contract has been devolved to such a unit, and
- (b) that decision is taken independently of any other part of the contracting authority,

the valuation methods described in sub-regulations (4) and (7) shall be adapted by aggregating only the value of the consideration which the contracting authority has given or expects to give, as the case may be, under contracts for the provision of services which were or are required for the sole purposes of that unit.

(9) The estimated value for the purposes of sub-regulation (1) of a public services contract by virtue of which services are to be provided over a period exceeding 4 years or over an indefinite period shall be the value of the consideration which the contracting authority expects to give in respect of each month of the period multiplied by 48.

(10) Where a public services contract includes one or more options the estimated value of the contract for the purposes of sub-regulation (1) shall be determined by calculating the highest possible consideration which could be given under the contract.

(11) A contracting authority shall neither enter into separate public services contracts nor select nor exercise a choice of a valuation method in accordance with sub-regulation (7) with the intention of avoiding the application of these regulations to those contracts.

(12) The relevant time for the purposes of sub-regulations (1) and (7)(a) means the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these regulations.

PART II

Technical specifications in contract documents.

8. (1) In this regulation —

“common technical specifications” 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;

“essential requirements” means requirements relating to safety, health and certain other aspects in the general interest which the services shall meet;

“European specification” means a common technical specification, the standard of a member State 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 Standard Institute (“ETSI”) as a “European Telecommunications Standard” (“ETS”);

“European technical approval” means an approval of the fitness for use of a product, 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;

“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 and of the materials and goods used in or for it or them (such as quality, performance, safety or dimensions) so that the works, work, materials and goods are described objectively in a manner which will ensure that they fulfil the use for which they are intended by the contracting authority and, in relation to materials and goods, “technical specifications” includes requirements in respect of quality assurance, terminology, symbols, tests and testing methods,

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

packaging, marking and labelling and, in relation to a work or works, it includes requirements relating to design and costing, the testing, inspection and acceptance of a work or works, and the methods or techniques of construction.

(2) If a contracting authority wishes to lay down technical specifications which the services to be provided under a public services contract and which the materials and goods used in or for it shall meet it shall specify all such technical specifications in the contract documents.

(3) Subject to sub-regulation (4), the technical specifications in the contract documents relating to a public services contract shall be defined by reference to any European specifications which are relevant.

(4) A contracting authority may define the technical specifications referred to in sub-regulation (3) other than by reference to relevant European specifications if —

- (a) the contracting authority is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in Gibraltar for the services to be provided under the contract or for the materials or goods to be used in or for it (but only to the extent that such an obligation is compatible with Community obligations applicable in Gibraltar);
- (b) the relevant European specifications do not include provision for establishing conformity to, or it is technically impossible to establish satisfactorily that the services or the material or goods do conform to, the relevant European specifications;
- (c) definition by reference to European specifications would conflict with the application of —
 - (i) Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment,
 - (ii) Council Decision 87/95/EEC on standardisation in the field of information technology and telecommunications, or
 - (iii) other Community instruments relating to specific types of services, materials or goods;
- (d) subject to sub-regulation (5), application of the relevant European specifications would oblige the contracting authority to use materials or goods incompatible with equipment already

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

**Revoked
Subsidiary
1996/005**

in use or would entail disproportionate costs or disproportionate technical difficulties; or

- (e) the project is of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

(5) A contracting authority may only define the technical specifications other than by reference to relevant European specifications on the grounds specified in sub-regulation (4)(d) where the contracting authority has a clearly defined and recorded strategy for changing over, within a set period, to European specifications.

(6) A contracting authority shall state in the contract notice which of the circumstances specified in sub-regulation (4)(b) to (e) was the ground for defining the technical specifications other than by reference to European specifications or, if it is impossible to include this information in the contract notice or it is a proposed Part B services contract, the contracting authority shall specify it in the contract documents and shall in any event keep a record of this information and shall, if so required for the purposes of compliance with Article 14.4 of the Directive, send that information to the Financial Secretary.

(7) In the absence of European specifications relevant to the services to be provided under a public services contract or to the materials or goods to be used in or for it, the technical specifications in the contract documents —

- (a) shall be defined by reference to the technical specifications of a relevant State recognised as complying with the basic requirements specified in any Council Directive on technical harmonisation in accordance with the procedures laid down in those directives and, in particular, in accordance with the procedures laid down in Council Directive 89/106/EEC on the approximation of laws, regulations and administrative procedures in the member States relating to construction products;
- (b) may be defined by reference to technical specifications of a relevant State relating to design and method of calculation and execution of a work or works and use of materials and goods;
- (c) may be defined by reference to the following standards (and, if they are so defined, preference shall be given to the following standards in the order in which they are listed) —
 - (i) standards of a relevant State implementing international standards;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (ii) other standards and technical approvals of a relevant State; or
- (iii) any other standards.

(8) Subject to sub-regulation (10), the contract documents shall not include technical specifications which refer to materials or goods of a specific make or source or to a particular process and which have the effect of favouring or eliminating particular services providers.

(9) Without prejudice to the generality of sub-regulation (8), references to trademarks, patents, types, origin or means of production shall not be incorporated into the technical specifications in the contract documents.

(10) Notwithstanding sub-regulation (8) or (9), a contracting authority may incorporate the references referred to in sub-regulation (8) or (9) into the technical specifications in the contract documents if —

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

PART III

PROCEDURES LEADING TO THE AWARD OF A PUBLIC SERVICES CONTRACT

Prior information notices.

9. (1) Subject to sub-regulation (2), a contracting authority shall, as soon as possible after the commencement of each of its financial years, send to the Official Journal a notice, in a form substantially corresponding to that set out in Part A of Schedule 2 and containing the information therein specified, in respect of the public services in relation to which it expects to seek offers leading to an award during that financial year and the notice shall be subdivided to give that information separately for each category of services specified in Part A of Schedule 1.

- (2) The obligation under sub-regulation (1) shall apply only —
 - (a) to proposed Part A services contracts which are not excluded from the application of these regulations by virtue of regulation 6 or 7; or

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (b) where, at the date of despatch of the notice, the total consideration which the contracting authority expects to give under all the proposed public services contracts for the provision of services falling within the same category specified in Part A of Schedule 1 equals or exceeds 750,000 ECU.

Selection of contract award procedure.

10. (1) For the purposes of seeking offers in relation to a proposed public services contract a contracting authority shall use the open procedure, the restricted procedure or the negotiated procedure and shall decide which of those procedures to use in accordance with this regulation.

(2) A contracting authority may use the negotiated procedure in the following circumstances —

- (a) subject to sub-regulation (3), in the event that the procedure leading to the award of a contract by the contracting authority using the open or restricted procedure was discontinued —
 - (i) because of irregular tenders, or
 - (ii) following an evaluation made in accordance with regulation 11(8) or 12(4),

and, without prejudice to the generality of the meaning of the words “irregular tenders”, a tender may be considered irregular if the services provider fails to meet the requirements of, or the tender offers variations on the requirements specified in, the contract documents where this is not permitted under the terms of the invitation to tender, or the services, materials or goods offered do not meet the technical specifications (within the meaning of regulation 8(1), of the contracting authority;

- (b) exceptionally, when the nature of the services to be provided, or the risks attaching thereto, are such as not to permit prior overall pricing;
- (c) when the nature of the services to be provided, in particular in the case of intellectual services or services specified in category 6 of Part A of Schedule 1, is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure;
- (d) subject to sub-regulation (3), in the absence of tenders or of appropriate tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (e) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services to be provided may only be provided by a particular person;
 - (f) when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;
 - (g) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedure is used, or the time limits specified in regulation 13 if the negotiated procedure is used pursuant to sub-regulation (2)(a) to (c), cannot be met;
 - (h) subject to sub-regulation (4), when a contracting authority finds it necessary for a person who has entered into a public services contract with the contracting authority to provide additional services which were not included in the project initially considered or in the original services contract but which through unforeseen circumstances have become necessary, and—
 - (i) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the contracting authority, or
 - (ii) such services can be provided separately from the services provided under the original contract but are strictly necessary to the performance of that contract; and
 - (j) subject to sub-regulation (5), when a contracting authority wishes a person who has entered into a public services contract with it to provide new services which are a repetition of services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.
- (3) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(a) or (d) unless the proposed terms of the contract are substantially unaltered from the proposed terms of the contract in relation to which offers were sought using the open or restricted procedure.

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(4) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(h) where the aggregate value of the consideration to be given under contracts for the additional services exceeds 50 per cent of the value of the consideration payable under the original contract and, for the purpose of this sub-regulation the value of the consideration shall be taken to include the estimated value of any goods which the contracting authority provided to the person awarded the contract for the purpose of carrying out the contract.

(5) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(j) unless the contract notice relating to the original contract stated that a services contract for new services which would be a repetition of the services provided under the original contract may be awarded using the negotiated procedure pursuant to sub-regulation (2)(j) and unless the procedure for the award of the new contract is commenced within three years of the original contract being entered into.

(6) In all circumstances other than those permitted by sub-regulations (2) to (5) the contracting authority shall use the open procedure or restricted procedure.

(7) A contracting authority using the negotiated procedure pursuant to sub-regulation (2)(d) shall submit a report recording the fact that it has done so to the Financial Secretary if so required for the purposes of compliance with Article 13.3(a) of the Directive.

The open procedure.

11. (1) A contracting authority using the open procedure shall comply with this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public services contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part B of Schedule 2, inviting tenders and containing the information therein specified.

(3) Subject to sub-regulation (4), the date which the contracting authority 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 contract notice and shall be not less than 52 days from the date of despatch of the notice.

(4) Where the contracting authority has published a notice in accordance with regulation 9 in relation to the category of services to be provided under the public services contract it may substitute for the period of not less than 52 days specified in sub-regulation (3) a period of not less than 36 days.

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(5) The contracting authority shall send the contract documents within 6 days of the receipt of a request from any services provider provided that the documents are requested by the date specified in the contract notice and any fee specified in the contract notice has accompanied the request.

(6) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a service provider provided that the request is received in sufficient time to enable the contracting authority to supply the information no later than 6 days before the date specified in the contract notice as the final date for the receipt of tenders.

(7) If the contract documents are too bulky to be supplied within the periods referred to in sub-regulation (5) or (6) or it is necessary that services providers be given the opportunity to inspect the site in relation to which the services are to be provided or documents relating to the contract documents, then the minimum periods referred to in sub-regulations (3) and (4) shall be extended to allow for such supply or inspection.

(8) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 21 only if the services provider may be treated as ineligible to tender on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers by the contracting authority and for the purpose of determining whether or not the supplier satisfies the standards the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

The restricted procedure.

12. (1) A contracting authority using the restricted procedure shall comply with this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public services contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part C of Schedule 2, inviting requests to be selected to tender and containing the information therein specified.

(3) Subject to sub-regulation (15), the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to tender shall be specified in the contract notice and shall not be less than 37 days from the date of the despatch of the notice.

(4) The contracting authority may exclude a services provider from those persons from whom it will make the selection of persons to be invited

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

to tender only if the services provider may be treated as ineligible on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers by the contracting authority and for the purpose of determining whether or not the supplier satisfies the standards the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(5) The contracting authority shall make the selection of the services providers to be invited to tender in accordance with regulations 14, 15, 16 and 17 and in making the selection and in issuing invitations the contracting authority shall not discriminate between services providers on the grounds of their nationality or the relevant State in which they are established.

(6) The contracting authority may predetermine the range within which the number of persons which it intends to invite to tender for the contract shall be fixed but only if —

- (a) the lower number of the range is not less than 5 and the higher number not more than 20,
- (b) the range is determined in the light of the nature of the services to be provided under the contract, and
- (c) the range is specified in the contract notice.

(7) In any event, the number of persons invited to tender shall be sufficient to ensure genuine competition.

(8) The contracting authority shall send invitations to each of the services providers selected to tender and the invitation shall be accompanied by the contract documents, or the invitation shall state the address for requesting them.

(9) The invitation shall be sent in writing simultaneously to each services provider selected to tender.

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

- (a) the address to which requests for the contract documents (if not accompanying the invitation) and further information relating to those documents should be sent, the final date for making such a request and the amount and terms of the fee which may be charged for supplying that material;
- (b) the final date for the receipt of tenders, the address to which they shall be sent and the language or languages in which they shall be drawn up;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (c) a reference to the contract notice published in accordance with sub-regulation (2);
- (d) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with regulations 15, 16 and 17; and
- (e) the criteria for the award of the contract if this information was not specified in the contract notice published in accordance with sub-regulation (2).

(11) Subject to sub-regulations (12) and (15), the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the invitation to tender which shall be specified in the invitation to tender in accordance with sub-regulation (10)(b) shall not be less than 40 days from the date of the despatch of the invitation.

(12) Subject to sub-regulation (15), where the contracting authority has published a notice in accordance with regulation 9 in relation to the category of services to be provided under the public services contract, it may substitute for the period of not less than 40 days in sub-regulation (11) a period of not less than 26 days.

(13) If it is necessary that services providers should be given the opportunity to inspect the site in relation to which the services under the contract are to be provided or documents relating to the contract documents, then the minimum periods referred to in sub-regulations (11) and (12) shall be extended to allow for such inspection.

(14) Subject to sub-regulation (15), the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a services provider selected to tender provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 6 days before the date specified in the invitation to tender as the final date for the receipt of tenders.

(15) Where compliance with the minimum periods referred to in sub-regulations (3), (11), (12) and (14) is rendered impracticable for reasons of urgency, the contracting authority may substitute for the period specified in sub-regulation (3) a period of not less than 15 days and for the period specified in sub-regulations (11) and (12) periods of not less than 10 days and for the period specified in sub-regulation (14) a period of not less than 4 days and, in those circumstances, the contracting authority shall send the invitation to tender by the most rapid means possible.

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(16) A contracting authority shall not refuse to consider an application to be invited to tender for a contract if it is made by letter, telegram, telex, facsimile or telephone provided that, in the last 4 cases, it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of applications to be invited to tender for the contract.

The negotiated procedure.

13. (1) A contracting authority using the negotiated procedure shall comply with the following provisions except that —

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(d) to (j), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(a) who invites to negotiate the contract every services provider who submitted a tender following an invitation made during the course of the discontinued open or restricted procedure (not being a tender which was excluded pursuant to regulation 11(8) or 12(4)),

need not comply with sub-regulations (2) to (6).

(2) The contracting authority shall publicise its intention to seek offers in relation to the contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part D of Schedule 2, inviting requests to be selected to negotiate and containing the information therein specified.

(3) Subject to sub-regulation (4), the date which the contracting authority shall fix as the last for the receipt by it of requests to be selected to negotiate shall be specified in the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(4) Where compliance with the minimum period of 37 days in sub-regulation (3) is rendered impracticable for reasons of urgency, the contracting authority may substitute a period of not less than 15 days and, in those circumstances, the contracting authority shall send the invitation to negotiate the contract by the most rapid means possible.

(5) Where there is a sufficient number of persons who are suitable to be selected to negotiate the contract, the number selected to negotiate the contract shall not be less than 3.

(6) A contracting authority shall not refuse to consider an application to be selected to negotiate if it is made by letter, telegram, telex, facsimile or by telephone provided that, in the last 4 cases, it is confirmed by letter

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

despatched before the date fixed by the contracting authority as the last date for the receipt of requests to be selected to negotiate.

(7) The contracting authority may exclude a services provider from those persons from whom it will make the selection of persons to be invited to negotiate the contract only if the services provider may be treated as ineligible on a ground specified in regulation 14 or if the services provider fails to satisfy the minimum standards of economic and financial standing, ability and technical capacity required of services providers by the contracting authority and for the purpose of determining whether or not the supplier satisfies the standards the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(8) The contracting authority shall make the selection of the services providers to be invited to negotiate in accordance with regulations 14, 15, 16 and 17 and in making the selection and in issuing invitations to negotiate the contracting authority shall not discriminate between services providers on the grounds of their nationality or the relevant State in which they are established.

PART IV

SELECTION OF SERVICES PROVIDERS

Criteria for rejection of services providers.

14. (1) A contracting authority may treat a services provider as ineligible to tender for, or to be included amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a contract in accordance with regulations 11(8), 12(4) and 13(7), or decide not to select a services provider to tender for or to negotiate a contract in accordance with regulations 12(5) and 13(8) on one of the following grounds, namely that the services provider —

- (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 the Bankruptcy Act, or is the subject of any similar procedure under the law of any state;
- (b) being a company has passed a resolution or is the subject of an order by the court for the winding up of the company otherwise than for the purpose of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the business of

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

the company or any part thereof or is the subject or proceedings for any of the above procedures or is the subject of similar procedures under the law of any state;

- (c) has been convicted of a criminal offence relating to the conduct of his business or profession;
- (d) has committed an act of grave misconduct in the course of his business or profession;
- (e) has not fulfilled obligations relating to the payment of social security contributions under the law of Gibraltar or of the relevant State in which the services provider is established;
- (f) has not fulfilled obligations relating to the payment of taxes under the law of Gibraltar or of the relevant State in which the services provider is established;
- (g) is guilty of serious misrepresentation in providing any information required of him under this regulation or under any of regulations 15, 16 and 17;
- (h) is not licensed in the relevant State in which he is established or is not a member of an organisation in that relevant State when the law of that relevant State prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member; or
- (j) subject to sub-regulations (5), (6), (6A) and (7), is not registered on the professional or trade register of the relevant State in which he is established under conditions laid down by that State.

(2) Subject to regulation 18, the contracting authority may require a services provider to provide such information as it considers it needs to make the evaluation in accordance with sub-regulation (1) except that it shall accept as conclusive evidence that a services provider does not fall within the grounds specified in sub-regulation (1)(a), (b), (c), (e) or (f) if that services provider provides to the contracting authority —

- (a) in relation to the grounds specified in sub-regulation (1)(a), (b) or (c),
 - (i) an extract from the judicial record, or
 - (ii) in a relevant State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (b) in relation to the grounds specified in sub-regulation (1)(e) or (f), a certificate issued by the relevant competent authority; and
- (c) in a relevant State where the documentary evidence specified in paragraph (a) and (b) is not issued or where it is issued but does not extend to all of the grounds specified in sub-regulation (1)(a), (b), (c), (e) or (f), a declaration on oath, or in a relevant State which does not provide for a declaration on oath a solemn declaration, made by the supplier before the relevant judicial, administrative or competent authority or a relevant notary public or commissioner for oaths.

(3) In this regulation, “relevant” in relation to a judicial, administrative or competent authority, notary public or commissioner for oaths means an authority designated by, or a notary public or commissioner for oaths in, the relevant State in which the services provider is established.

(4) The following are the appropriate professional or trade registers for the purposes of sub-regulation (1)(j) —

in Austria, the Firmenbuch, Gewerberegister and Mitgleiderverzeichnisse der Landeskammern;

in Belgium, the registre du commerce/Handelsregister and the ordres professionnels - Beroepsorden;

in the Czech Republic, the obchodní rejstřík;

in Denmark, the Erhvervs - og Selskabstyrelsen;

in Estonia, the Keskäriregister;

in Finland, the Kaupparekisteri and Handelsregistret;

in France, the registre du commerce and the répertoire des métiers;

in Germany, the Handelsregister, the Handwerksrolle and the Vereinsregister;

in Hungary, the Cégnyelvántartás, the egyéni vállalkozók jegyzői nyilvántartása; the szakmai kamarák nyilvántartása;

in Iceland, the Firmaskra or Hutafelgaska;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato, the Registro delle commissioni

provinciali per l'artigianato or the Consiglio nazionale degli ordini professionali;

in Latvia, the Uzņēmumu reģistrs (“Enterprise Register”);

in Lithuania, the Juridinių asmenų registras;

in Luxembourg, the registre aux firmes and the rôle de la Chambre des métiers;

in the Netherlands, the Handelsregister;

in Norway, the Foretaksregisteret;

in Poland, the Krajowy Rejestr Sądowy (National Court Register);

in Portugal, the Registo Nacional das Pessoas Colectivas;

in Slovakia, the Obchodný register;

in Slovenia, the Sodni register and obrtni register;

in Spain, the Registro Central de Empresas Consultoras y de Servicios del Ministerio de Economía y Hacienda; and

in Sweden, the Aktienbolagsregistret, Handelsregistret of Foreningsregistret.

(5) A services provider established in Gibraltar, the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(j) if the services provider —

- (a) is established in Ireland and is certified as registered with the Registrar of Friendly Societies, or
- (b) is established in Gibraltar or either State and is either —
 - (i) certified as incorporated by the Registrar of Companies appropriate to the place of establishment, or
 - (ii) is certified as having declared on oath that he is established at a specific place of business and under a specific trading name in Gibraltar or in either State, as the case may be, and is carrying on business in the trade in question in whichever location he is established.

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(6) A services provider established in Greece shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(j) —

- (a) when the services to be provided under the contract are specified in paragraph 8 of Schedule 1 and when Greek legislation requires persons who provide those services to be registered on the professional register Μητρο Μελεθτην and Μητρο Γραχειων Μελετην if he is registered on that register, and
- (b) in any other case, in accordance with sub-regulation (7).

(6A) A service provider who is established—

- (a) in Cyprus shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(j) if —
 - (i) he provides a certificate from the the Έφορος Εταιρειών και Επισημος Παραλήπτης (Registrar of Companies and Official Receiver) that he is incorporated or registered; or
 - (ii) he is certified as having declared on oath that he is engaged in the profession in question in Cyprus in a specific place under a given business name;
- (b) in Hungary shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(j) if he is certified as being entitled to be engaged in the business activity or profession in question;
- (c) in Malta shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(j) if he gives his “numru ta' registrazzjoni tat-Taxxa tal-Valur Miżjud (VAT) u n- numru tal-liċenzja ta' kummerċ”, and, if he is a partnership or company, the relevant registration number as issued by the Malta Financial Services Authority.

(7) A services provider established outside Gibraltar in a relevant State, other than the United Kingdom, which either has an equivalent professional or trade register which is not listed in sub-regulation (4) or which does not have an equivalent professional or trade register to those listed in that sub-regulation shall be treated as registered on a professional or trade register for the purpose of sub-regulation (1)(j) on production of either a certificate that he is registered on the equivalent professional or trade register or where no such register exists, a declaration on oath, or, in a relevant State which does not provide for a declaration on oath, a solemn declaration, made by

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

the services provider before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths, that he exercises the particular profession or trade.

Information as to economic and financial standing.

15. (1) Subject to regulation 18 and sub-regulation (2), in assessing whether a services provider meets any minimum standards of economic and financial standing required of services providers by the contracting authority for the purpose of regulations 11(8), 12(4) and 13(7), and in selecting the services providers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a services provider to provide such of the information as it considers it needs to make the assessment or selection) —

- (a) appropriate statements from the services provider's bankers, or evidence of relevant professional risk indemnity insurance;
- (b) statements of accounts or extracts therefrom relating to the business of the services provider where publication of the statement is required under the law of the relevant State in which the services provider is established;
- (c) a statement of the overall turnover of the business of the services provider and the turnover in respect of the provision of services of the type to be provided under the proposed services contract in the 3 previous financial years of the services provider.

(2) Where the information specified in sub-regulation (1) is not appropriate in a particular case a contracting authority may require a services provider to provide other information to demonstrate the services provider's economic and financial standing.

(3) A contracting authority which requires information to be provided in accordance with sub-regulations (1) and (2) shall specify in the contract notice or in the invitation to tender the information which the services provider shall provide.

(4) Where a services provider is unable for a valid reason to provide the information which the contracting authority has required, the contracting authority shall accept such other information provided by the services provider as the contracting authority considers appropriate.

Information as to ability and technical capacity.

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

16. (1) Subject to regulation 18, in assessing whether or not a services provider meets any minimum standards of ability and technical capacity required of services providers by the contracting authority for the purposes of regulations 11(8), 12(4) and 13(7), and in selecting the services providers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority may have regard to —

- (a) the services provider's ability, taking into account in particular his skills, efficiency, experience and reliability; and
- (b) his technical capacity, taking into account any of the following—
 - (i) the services provider's educational and professional qualifications where the services provider is an individual and the qualifications of the services provider's managerial staff if any and those of the person or persons who would be responsible for providing the services under the contract;
 - (ii) the principal services provided by the services provider of a similar type to the services to be provided under the contract in the past 3 years, the dates on which the services were provided, the consideration received and the identity of the persons to whom the services were provided, any certificate issued or countersigned by that person confirming the details of the services provided or, but only where that person was not a contracting authority, any declaration by the services provider attesting the details of the services provided;
 - (iii) the technicians or technical bodies who would be involved in the provision of the services under the contract, particularly those responsible for quality control, whether or not they are independent of the services provider;
 - (iv) the services provider's average annual manpower and the number of managerial staff over the previous 3 years;
 - (v) the tools, plant and technical equipment available to the services provider for providing the services under the contract;
 - (vi) the services provider's measures for ensuring quality and his study and research facilities in relation to the services to be provided under the contract;

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (vii) where the services to be provided under the contract are complex or are required for a special purpose, any check, carried out by the contracting authority or on its behalf by a competent official body of the relevant State in which the services provider is established, on the technical capacity of the services provider in relation to the services to be provided under the contract and if relevant, on the services provider's study and research facilities and quality control measures;
- (viii) any certificate that the services of the services provider to be provided under the contract conform to BS 5750 or any certificate of any independent body established in any relevant State conforming to the EN 45 000 European standards series attesting conformity to relevant quality assurance standards based on the EN 29 000 series, or where the services provider has no access to such a certificate, or cannot obtain such a certificate within the relevant time limits, any other evidence of conformity to equivalent quality assurance standards;
- (ix) any proportion of the contract which the services provider intends to sub-contract to another person.

(2) The contracting authority shall specify in the contract notice or in the invitation to tender or to negotiate what information, for the purposes of making the assessment of selection for the purposes of sub-regulation (1), it requires to be provided and it may require a services provider to provide such of that information as it considers it needs to make the assessment or selection.

Supplementary information

17. The contracting authority may require a services provider to provide information supplementing the information supplied in accordance with regulations 14, 15 and 16 or to clarify that information, provided that the information so required relates to the matters specified in regulations 14, 15 and 16.

Official lists of recognised services providers

18. Where a services provider is registered on the official list of recognised services providers in a relevant State which maintains such lists and in which the services provider is established and the services provider submits to the contracting authority a certificate of registration issued by the authority administering the official lists which specifies the information submitted to that authority which enabled the services provider to be registered and which states the classification given, the contracting

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

authority, to the extent that the certificate deals with the grounds referred to in regulations 14(1)(a) to (d) and (g) to (j), 15(1)(b) and (c) and 16(1)(b)(i)—

- (a) shall accept the certificate as evidence that the services provider does not fall within the grounds specified in regulation 14(1)(a) to (d) and (g) to (j) and shall not be entitled to require the services provider to submit such information relating to those grounds as is specified in regulation 14.
- (b) shall not be entitled to require the services provider to provide information specified in regulations 15(1)(b) and (c) and 16(1)(b)(i), and
- (c) shall not be entitled to seek any supplementary information in accordance with regulation 17 in relation to the matters specified in paragraphs (a) and (b).

Consortia

19. (1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a services provider, acting jointly for the purpose of being awarded a public services contract.

(2) A contracting authority shall neither 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 public services contract on the grounds that the consortium has not formed a legal entity for the purposes of tendering for or negotiating the contract, but where a contracting authority awards a public services contract to a consortium it may 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 services provider where the services provider is a consortium includes a reference to each person who is a member of that consortium.

Corporations

20. (1) A contracting authority shall not treat the tender of a services provider as ineligible nor decide not to include a services provider 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 ground that under the law of Gibraltar the services provider is required to be an individual, a corporation or other type of body, if under the law of the member State in which the services provider is established, he is authorised to provide such services.

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(2) A contracting authority may require a services provider which is not an individual to indicate in the tender or in the request to be selected to tender for or to negotiate the public services contract the names and relevant professional qualifications of the staff who will be responsible for the provision of the services.

PART V

THE AWARD OF A PUBLIC SERVICES CONTRACT

Criteria for the award of a public services contract

21. (1) Subject to sub-regulations (5), (6) and (7), a contracting authority shall award a public services contract on the basis of the offer which—

- (a) is the most economically advantageous to the contracting authority, or
- (b) offers the lowest price.

(2) The criteria which a contracting authority may use to determine that an offer is the most economically advantageous include period for completion or delivery, quality, aesthetic and functional characteristics, technical merit, after sales service, technical assistance and price.

(3) Where a contracting authority intends to award a public services 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 the contract notice or in the contract documents.

(4) Where a contracting authority awards a public services 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 —

- (a) the offer meets the minimum requirements of the contracting authority, and
- (b) it has stated those minimum requirements and any specific requirements for the presentation of an offering variations in the contract documents,

but if the contracting authority will not take account of offers which offer such variations it shall state that fact in the contract notice.

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(5) A contracting authority may not reject an offer which offers variations on the requirements specified in the contract documents on the ground that it would lead to the award of a public supply contract within the meaning of the Public Supply Contracts Regulations 1996.

(6) A contracting authority may not reject an offer on the ground that the technical specifications in the offer have been defined by reference to European specifications (within the meaning of regulation 8(1)) or to the technical specifications of a relevant State specified in regulation 8(7)(a) and (b).

(7) If an offer for a public services contract is abnormally low the contracting authority 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 and has —

- (a) if awarding the public services 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 tender, before awarding the contract, or
- (b) if awarding the public services 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 contracting authority may take into account explanations which justify the offer on objective grounds including the economy of the method of providing the services, the technical solution suggested by the services provider or the exceptionally favourable conditions available to the services provider for the provision of the services or the originality of the services proposed by the services provider.

(8) If a contracting authority which rejects an abnormally low offer is awarding the public services contract on the basis of the offer which offers the lowest price, it shall send a report justifying the rejection to the Financial Secretary for the purpose of complying with Article 37 of the Directive.

(9) For the purposes of this regulation “offer” includes a bid by one part of a contracting authority to provide services to another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice

22. (1) A contracting authority which has awarded a Part A or Part B services contract shall, no later than 48 days after the award, send to the

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

Official Journal a notice, substantially corresponding to the form set out in Part E of Schedule 2 and, subject to sub-regulation (2), including the information therein specified.

(2) Any of the information specified in Part E of Schedule 2 to be included in the contract award notice may be omitted in a particular case where to publish such information would impede law enforcement, would otherwise be contrary to the public interest, would prejudice the legitimate commercial interest of any person or might prejudice fair competition between services providers.

(3) A contracting authority which has awarded a Part B services contract shall state in the contract award notice whether or not it agrees to its publication.

Information about contract award procedure

23. (1) A contracting authority shall, within 15 days of the date on which it receives a written request from any services provider who was unsuccessful (whether pursuant to regulation 11(8), 12(4), 12(5), 13(7), 13(8) or 21), inform that services provider of the reasons why he was unsuccessful and, if the services provider was unsuccessful as a result of the evaluation of offers made in accordance with regulation 21, the name of the person awarded the public services contract.

(2) A contracting authority shall prepare a record in relation to each public services contract awarded by it specifying —

- (a) the name and address of the contracting authority;
- (b) the services to be provided under the public services contract and the value of the consideration to be given under it;
- (c) the name of the persons whose offers were evaluated in accordance with regulation 21 and, where the contracting authority has used the restricted or negotiated procedure, the reasons for their selection;
- (d) the name of the persons who were unsuccessful pursuant to regulation 11(8), 12(4), 12(5), 13(7) or 13(8) and the reasons why they were not successful;
- (e) the name of the person to whom the public services contract was awarded and the reasons for having awarded the contract to him;

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (f) if known to the contracting authority, the services under the public services contract which the person to whom the contract has been awarded intends to sub-contract to another person;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 10(2) constituted grounds for using that procedure.

(3) If in accordance with Article 12.3 of the Directive the Commission requests a report containing the information specified in sub-regulation (2), the contracting authority shall send a written report containing that information or the main features of it, to the Financial Secretary.

(4) Where a contracting authority decides not to award a public services contract in respect of which a contract notice was published nor to seek offers in relation to another contract for the same purpose it shall inform the Official Journal of that decision and shall, if so requested in writing by any services provider who submitted an offer or who applied to be included amongst the persons to be selected to tender for or to negotiate the contract, inform him of the reasons for its decision.

PART VI MISCELLANEOUS

Design contests

24. (1) This regulation shall apply to a design contest —

- (a) if it is organised as part of a procedure leading to the award of a public services contract and the estimated value of any public services contract (calculated in accordance with regulation 7) which it is intended to award as the outcome of the contest is not less than 200,000 ECU, or
- (b) whether or not it is organised as part of a procedure leading to the award of such a contract, if the aggregate of the value of the prizes or payments for the contest is not less than 200,000 ECU.

(2) The contracting authority shall publicise its intention to hold a design contest by sending to the Official Journal a notice in a form substantially corresponding to that set out in Part F of Schedule 2 and containing the information therein specified.

(3) The contracting authority shall make the rules of the design contest available to services providers who wish to participate in the contest.

Public Finance (Control and Audit)

1977-09

Revoked
Subsidiary
1996/005

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(4) The contracting authority may restrict the number of persons invited to participate in the design contest, but it shall make the selection on the basis of clear and non discriminatory criteria.

(5) The contracting authority shall take account of the need to ensure adequate competition in determining the number of persons invited to participate in the design contest.

(6) Regulation 20 applies to design contests as it applies to the seeking of offers in relation to a proposed public services contract.

(7) The contracting authority shall provide for the participants' proposals to be submitted to the jury without any indication as to the authorship of each proposal.

(8) The contracting authority shall ensure that the members of the jury are all individuals who are independent of participants in the design contest and, when the participants are required to possess a particular professional qualification, that at least one third of the members of the jury also possess that qualification or an equivalent qualification.

(9) The contracting authority shall ensure that the jury makes its decision independently and solely on the basis of the criteria set out in the notice referred to in sub-regulation (2).

(10) The contracting authority shall, not later than 48 days after the date the jury has made its selection, publicise the results of the design contest by sending to the Official Journal a notice substantially corresponding to the form set out in Part G of Schedule 2 and including the information therein specified.

Subsidised public services contracts

25. (1) Where a contracting authority undertakes to contribute more than half of the consideration to be or expected to be paid under a public services contract to which this sub-regulation applies by virtue of sub-regulation (2) which has been or is to be entered into by a person other than a contracting authority (in this sub-regulation referred to as "the subsidised body"), that contracting authority shall —

- (a) make it a condition of the making of such contribution that the subsidised body complies with the provisions of these regulations in relation to that public services contract as if it were a contracting authority, and
- (b) ensure that the subsidised body does so comply to recover the contribution.

1977-09

**Revoked
Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

(2) Sub-regulation (1) applies to a contract which would be a public services contract if the subsidised body were a contracting authority and which is for the carrying out of services in connection with the carrying out of any of the activities specified in Schedule 1 of the Public Works Contracts Regulations 1996 as are included in Group 502 or for the carrying out of building work for hospitals, facilities intended for sports, recreation and leisure, school building or buildings for administrative purposes.

Obligations relating to employment protection and working conditions

26. A contracting authority which includes in the contract documents information as to where a services provider may obtain information about obligations relating to employment protection and working conditions which will apply to the services to be provided under the public services contract shall request services providers to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

Statistical and other reports

27. (1) A contracting authority shall for the purpose of enabling the United Kingdom to comply with Article 39 of the Directive, no later than 31st July 1997 and 31st July in each alternate year thereafter, send to the Financial Secretary a report specifying in relation to each public services contract awarded by it during the year preceding the year in which the report is made

- (a) the value (estimated if necessary) of the consideration payable under the contract;
- (b) whether the open, restricted or negotiated procedure was used in awarding the contract;
- (c) if the negotiated procedure was used, pursuant to which provision of regulation 10(2) that procedure was used;
- (d) the services specified in Part A of Schedule 1 provided or to be provided under the contract; and
- (e) the nationality of the person to whom the contract was awarded.

(2) A contracting authority shall send to the Financial Secretary a report containing such other information as he may from time to time require in respect of a particular public services contract for the purpose of causing the Commission to be informed.

Responsibility for obtaining and forwarding reports and information.

28. (1) Where the Financial Secretary is in possession of information which a contracting authority is required to send to him under these regulations as a result of a Community obligation, he shall send that information to the Secretary of State for onward transmission to the Commission.

(2) Where the Financial Secretary requires information available to a relevant State by virtue of Article 14.4 and submits to the Governor a request for the provision of such information the Governor shall transmit such request to the Secretary of State and shall provide to the Financial and Development Secretary the information provided by the relevant State to the Secretary of State in response to the request.

(3) Where in the Directive, other than in Article 14.4 or 39, provision is made for a relevant State to supply information to or receive information from the Commission or a relevant State the Financial Secretary shall send such information to the Governor for onward transmission to the Secretary of State, or, as the case may be, where such information has been supplied to the Governor the Financial Secretary shall cause that information, or information as to its availability, to be published in appropriate manner in Gibraltar.

Publication of notices

29. (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 and where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulation 12(15) or 13(4), the notice shall be sent by telex, telegram or telefax.

(2) Any such notice shall not contain more than 650 words.

(3) The contracting authority shall retain evidence of the date of despatch to the Official Journal of each notice.

(4) The contracting authority shall not place a contract notice in the press or like publications in Gibraltar before the date on which the notice is despatched in accordance with sub-regulation (1) and if it does after that date so place the notice it shall not add to the notice any information in relation to the contract which was not contained in the notice sent to the Official Journal.

(5) When a contracting authority is not required to send a contract notice to the Official Journal in respect of a particular services contract it may nevertheless send such a notice and request that it be published.

PUBLIC SERVICES CONTRACTS REGULATIONS 1996
Confidentiality of information

30. A contracting authority shall comply with such requirements as to confidentiality of information provided to it by a services provider as the services provider may reasonably request.

Sub-contracting

31. A contracting authority may require a services provider to indicate in his tender what part of the public services contract he intends to sub-contract to another person.

Enforcement of obligations.

32. The provisions of the Public Procurement (Enforcement of Obligations) Regulations 1996 shall apply for the purpose of enforcing the obligations under these regulations in accordance with Council Directive 89/665/EEC

SCHEDULE 1

Regulation 5

CATEGORIES OF SERVICES

PART A

| <i>Category</i> | <i>Services</i> | <i>CPC Reference</i> |
|-----------------|--|-----------------------------------|
| 1. | Maintenance and repair of vehicles and equipment | 6112, 6112, 633, 886 |
| 2. | Transport by land, including armoured car services and courier services but not including transport or mail and transport by rail. | 712 (except 71235) 7512, 87034 |
| 3. | Transport by air but not transport of mail | 73 (except 7321) |
| 4. | Transport of mail by land, other than by rail, and by air | 71235, 7321 |
| 5. | Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite services | 752 |
| 6. | Financial services | 81(Part) 812, 814 |
| | (a) Insurance services | |
| | (b) Banking and investment services other than | |

Public Finance (Control and Audit)

1977-09

Revoked
Subsidiary
1996/005

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services

| | | |
|-----|--|--------------------|
| 7. | Computer and related services | 84 |
| 8. | R & D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority | 85 |
| 9. | Accounting, auditing and book-keeping services | 862 |
| 10. | Market research and public opinion polling services | 864 |
| 11. | Management consultancy services and related services, but not arbitration and conciliation services | 865, 866 |
| 12. | Architectural services: engineering services and integrated engineering services: urban planning and landscape architectural services: related scientific and technical consulting services: technical testing and analysis services | 867 |
| 13. | Advertising services | 871 |
| 14. | Building-cleaning services and property management services | 874 88201 to 82206 |
| 15. | Publishing and printing services on a fee or contract basis | 88442 |
| 16. | Sewerage and refuse disposal service: sanitation and similar services | 94 |

PART B

| <i>Category</i> | <i>Services</i> | <i>CPC Reference</i> |
|-----------------|-------------------------------|----------------------|
| 17. | Hotel and restaurant services | 64 |
| 18. | Transport by water | 72 |

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

| | | |
|-----|---|-----------------------|
| 19. | Supporting and auxiliary transport services | 74 |
| 20. | Legal services | 861 |
| 21. | Personnel placement and supply services | 872 |
| 22. | Investigation and security services, other than armoured car services | 873 (except 87304) |
| 23. | Education and vocational education services | 92 |
| 24. | Health and social services | 93 |
| 25. | Recreational, cultural and sporting services | 96 |
| 26. | Other services | |

SCHEDULE 2

Regulations 9(1)
11(2), 12(2), 13(2)
22(1) and 24(2) and (10)

**FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL
JOURNAL**

PART A

PRIOR INFORMATION NOTICES

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority and of the service from which additional information may be obtained.
2. For each category of services in Part A of Schedule 1, the total quantity in value to be provided.
3. For each category of services in paragraph 2 the estimated date of the commencement of the procedures leading to the award of the contract(s) (if known).
4. Other information.
5. Date of despatch of the notice.

PART B

OPEN PROCEDURE NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
2. Category of services and description, CPC reference number.
3. Place of delivery.
4.
 - (a) Indication of whether the provision of the services is reserved by law, regulation or administration provision to a particular profession.

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (b) Reference to the law, regulation or administrative provision.
 - (c) Indication of whether legal persons, should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
5. Indication of whether services providers can tender for some or all of the services required.
 6. Where applicable, prohibition on variants.
 7. Period of contract or time-limit, if any, for completion.
 8.
 - (a) Name and address of the services provider from which the contract and additional documents may be requested.
 - (b) Final date for making such requests.
 - (c) Where applicable, the amount and terms of payment of any sum payable for such documents.
 9.
 - (a) Where applicable, the persons authorised to be present at the opening of tenders.
 - (b) Date, time and place of opening.
 10. Any deposits and guarantees required.
 11. The main terms concerning financing and payment and/or references to the relevant provisions.
 12. Where applicable, the legal form to be taken by the grouping of services providers to whom the contract is awarded.
 13. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
 14. Period during which the tenderer is bound to keep open his tender.
 15. 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.
 16. Other information.

17. Date of despatch of the notice.

PART C

RESTRICTED PROCEDURE NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
2. Category of services and description. CPC reference number.
3. Place of delivery.
4.
 - (a) Indication of whether the provisions of the services is reserved by law, regulation of administrative provision to a particular profession.
 - (b) Reference to the law, regulation or administrative provision.
 - (c) Indication whether legal persons, should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
5. Indication of whether the services provider can tender for all or part of the services required.
6. If known, the number of services providers which will be invited to tender or the range within which that number is expected to fall.
7. Where applicable, prohibition on variants.
8. Period of contract or time limit, if any, for completion of the services.
9. Where applicable, the legal form to be assumed by the grouping of services providers to whom the contract is awarded.
10.
 - (a) Where applicable, justification for the use of shorter time limits.
 - (b) Final date for the receipt of requests to participate.
 - (c) Address to which they shall be sent.

- (d) Language(s) in which they shall be drawn up.
- 11. Final date for the despatch of invitations to tender.
- 12. Any deposits and guarantees required.
- 13. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
- 14. Criteria for the award of the contract. Criteria other than that of lowest price shall be mentioned where these do not appear in the contract documents.
- 15. Other information.
- 16. Date of despatch of the notice.

PART D

NEGOTIATED PROCEDURE NOTICE

- 1. Name, address and telephone, telegraphic and facsimile numbers of the contracting authority.
- 2. Category of services and description. CPC reference number.
- 3. Place of delivery.
- 4.
 - (a) Indication of whether the provision of the services is reserved by law, regulation or administrative provision to a particular profession.
 - (b) Reference to the law, regulation or administrative provision.
 - (c) Indication of whether legal persons, should indicate the names and professional qualifications of the staff to be responsible for the provision of the services.
- 5. Indication of whether services providers can offer some or all of the services required.

Public Finance (Control and Audit)

1977-09

**Revoked
Subsidiary
1996/005**

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

6. If known, the number of services providers which will be invited to tender or the range within which that number is expected to fall.
7. Where applicable, non-acceptance of variants.
8. Period of contract or time-limit, if any, for completion of the services.
9. Where applicable, the legal form to be assumed by a grouping of services providers to whom the contract is awarded.
10.
 - (a) Where applicable, justification for the use of shorter time limits.
 - (b) Final date for the receipt of requests to participate.
 - (c) Address to which they shall be sent.
 - (d) Language(s) in which they shall be drawn up.
11. Any deposits and guarantees required.
12. The information and formalities necessary for an appraisal of the minimum standards of economic and financial standing, ability and technical capacity required of the services provider.
13. Where applicable, the names and addresses of services providers already selected by the contracting authority.
14. Other information.
15. Date of despatch of the notice.
16. Date(s) of previous publications in the Official Journal of the European Communities.

PART E

CONTRACT AWARD NOTICE

1. Name and address of contracting authority.
2.
 - (a) Award procedure chosen.

1977-09

Revoked
Subsidiary
1996/005

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

- (b) Where applicable, justification for the use of the negotiated procedure.
3. Category of services and description. CPC reference number.
4. Date of award of contract.
5. Criteria for award of contract.
6. Number of offers received.
7. Name(s) and address(es) of services provider(s).
8. Price or range of prices paid or to be paid.
9. Where appropriate, value and proportion of the contract which may be sub-contracted to third parties.
10. Other information.
11. Date of publication of the contract notice in the Official Journal of the European Communities.
12. Date of despatch of the notice.
13. In the case of contracts for services specified in Part B of Schedule 1, agreement by the contracting authority to publication of the notice.

PART F

DESIGN CONTEST NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority and of the service from which additional information may be obtained.
2. Project description.
3. Nature of the contest: open or restricted.
4. In the case of open contests: final date for receipt of plans and designs.
5. In the case of restricted contests —
 - (a) the number of participants envisaged;

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

1977-09

**Revoked
Subsidiary
1996/005**

- (b) where applicable, names of the participants already selected;
 - (c) criteria for the selection of participants;
 - (d) final date for receipt of requests to participate.
6. Where applicable, an indication of whether participation is reserved to a particular profession.
 7. Criteria to be applied in the evaluation of projects.
 8. Where applicable, names of the persons selected to be members of the jury.
 9. Indication of whether the decision of the jury is binding on the contracting authority.
 10. Where applicable, number and value of the prizes.
 11. Where applicable, details of payments to all participants.
 12. Indication of whether follow-up contracts will be awarded to one of the winners.
 13. Other information.
 14. Date of despatch of the notice.

PART G

DESIGN CONTEST RESULT NOTICE

1. Name, address and telephone, telegraphic, telex and facsimile numbers of the contracting authority.
2. Project description.
3. Number of participants.
4. Number of participants established outside the Gibraltar.
5. Winner(s) of the contest.
6. Where applicable, the prize(s) awarded.

1977-09

Revoked

**Subsidiary
1996/005**

Public Finance (Control and Audit)

PUBLIC SERVICES CONTRACTS REGULATIONS 1996

7. Other information.
8. Reference to publication of the design contest notice in the Official Journal of the European Communities.
9. Date of despatch of the notice.