

# Public Finance (Control and Audit)

## UTILITIES CONTRACTS REGULATIONS 1997

**1977-09**

**Revoked  
Subsidiary  
1997/030**

Regulations made under section 75 of the Public Finance (Control and Audit) Act and section 23(g) of the Interpretation and General Clauses Act.

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**Revoked by LN. 2012/089 as from 21.6.2012**

**(LN.1997/030)**

**20.3.1997**

Amending enactments	Relevant current provisions	Commencement date
2005/011	Sch. 2	1.5.2004
Act. 2007-17	rr. 27(1), (2) & (3), 28(1) & (2)	14.6.2007

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**PART I**  
**GENERAL**

**Title, commencement and transitional provisions.**

1.(1) These Regulations may be cited as the Utilities Contracts Regulations 1997 and shall come into effect on the 20th March.1997.

(2) Nothing in these Regulations shall affect any contract entered into before the coming into effect of these Regulations.

**Interpretation.**

2. (1)In these Regulations –

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

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

“the Commission” means the European Commission;

“contract” means any services contract, supply contract or works contract;

“contract documents” means the invitation to tender for, or to negotiate the contract, the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the utility and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with Regulation 15(2)(b);

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

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

- (a) which is conducted by a utility in which it invites the entry of plans or 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

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- (d) which enables the utility to acquire the use or ownership of plans or designs selected by the jury;

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

“established” means the same as it does for the purposes of the Community Treaties;

“financial year” means the period of 12 months ending on the date in any year in respect of which the accounts of a utility are prepared;

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

“goods” includes electricity, substances, growing crops and things attached to or forming part of the land, which are agreed to be severed before the purchase or hire under a supply contract, any ship, aircraft or vehicle and, when the utility is an entity specified in Part K of Schedule 1, is deemed to include telecommunications software services;

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

“periodic indicative notice” means a notice sent to the Official Journal in accordance with regulation 14;

“provider” means any supplier, contractor or services provider;

“public telecommunications network” means an infrastructure for the use of the public which enables signals to be conveyed by wire,

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microwave, optical means or other electromagnetic means between physical connections which are necessary for access to, and efficient communication through the network;

“public telecommunications services” means services which consist in whole, or in part, in the transmission and routing of signals on a public telecommunications network by means of telecommunications processes other than radio broadcasting and television;

“relevant State” has the meaning ascribed to it by Regulation 4(2);

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

“services contract” means a contract in writing for consideration (whatever the nature of the consideration), other than a supply contract or a works contract, under which a utility engages a person to provide services,

but does not include –

- (i) a contract of employment or other contract of service; or
- (ii) a contract under which a utility engages a person to provide to the public, services lying within its responsibility, and under which the consideration given by the utility consists of, or includes, the right to exploit the provision of the services;

“services provider” has the meaning ascribed to it by Regulation 4;

“ship” includes any boat and any description of vessel used in maritime navigation;

“software services” means the design or adaptation of software;

“substance” means any natural or artificial substance, whether in solid, liquid or gaseous form or in the form of a vapour;

“supplier” has the meaning ascribed to it by Regulation 4;

“supply contract” means a contract in writing for consideration (whatever the nature of the consideration) –

- (a) for the purchase of goods by a utility (whether or not the consideration is given in installments and whether or not the

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purchase is conditional upon the occurrence of a particular event), or

- (b) for the hire of goods by a utility (both where the utility becomes the owner of the goods after the end of the period of hire and where it does not),

and for any siting and installation of those goods, but where, under such a contract, services are also to be provided, the contract shall only be a supply contract if the value of the consideration attributable to the goods is greater than the value attributable to the services;

“telecommunications software services” means software services for use in the operation of a public telecommunications network or which are intended to be used in the provision of a public telecommunications service as such;

“utility” has the meaning ascribed to it by Regulation 3;

“work” means the outcome of any works which is sufficient of itself to fulfill an economic and technical function;

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

“works: means any of the activities specified in Schedule 3 being activities contained in the general industrial classification of economic activities within the Communities;

“works contract” means a contract in writing for consideration (whatever the nature of the consideration) –

- (a) for the carrying out of a work or works for a utility, or
- (b) under which a utility engages a person to procure by any stated means, the carrying out for the utility of a work corresponding to specified requirements; and

“year” means a calendar year.

(2) For the purposes of these Regulations –

- (a) “Part A services contract” is a contract under which services specified in Part A of Schedule 4 are to be provided;



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- (b) “Part B services contract” is a contract under which services specified in Part B of Schedule 4 are to be provided,

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

- (i) 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
- (ii) 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 State of any amount expressed in these Regulations in ECU shall be determined by reference to the rate for the time being applying for the purposes of Council Directive 93/38/EEC 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 must include 2 working days;
- (c) within a period, and the last day of that period is not a working day, the period shall be extended to include the following working day.

### **Utilities.**

3. (1) For the purposes of these Regulations, a utility is a person specified in the first column of Schedule 1 who carries on an activity listed in the second column of any part of Schedule 1 in which it is specified but only if that person is–

- (a) a relevant person, or
- (b) a person who supplies drinking water, electricity, gas or heat to a network itself operated by a relevant person.
- (2) For the purposes of this regulation and Schedule 1–

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“network”, in relation to a service in the field of transport, means a system operated in accordance with conditions laid down by or under the law in force in Gibraltar including such conditions as the routes to be served, the capacity to be made available and the frequency of the service;

“public authority” has the meaning given to it in regulation 3 of the Public Services Contracts Regulations 1996 (Legal Notice No. 5 of 1996);

“public telecommunications network” has the meaning ascribed to it by regulation 2(1) of these Regulations;

“public telecommunications services” has the meaning ascribed to it by regulation 2(1) of these Regulations;

“public undertaking” means a person over whom one or more public authorities are able to exercise directly or indirectly a dominant influence by virtue of—

- (a) their ownership of it,
- (b) their financial participation in it, or
- (c) the rights accorded to them by the rules which govern it;

and, in particular, a public authority shall be considered to be able to exercise a dominant influence over a person, when it directly or indirectly—

- (d) possesses the majority of the issued share capital of that person, or controls the majority of the voting power attached to the issued share capital of that person, or
- (e) may appoint more than half of the individuals who are ultimately responsible for managing that person’s affairs, more than half its members or, in the case of a group of individuals, more than half of those individuals;

“relevant person” means a person who is—

- (a) a public authority,
- (b) a public undertaking, or
- (c) not a public authority or a public undertaking and has as one of its activities an activity specified in the second column of

Schedule 1 and carries out that activity on the basis of a special or exclusive right; and

“special or exclusive right” means a right deriving from any authorisation granted by a competent authority where the effect of the authorisation is to reserve for one or more persons the exploitation of an activity specified in the second column of Schedule 1, and in particular, a person may be considered to enjoy a special or exclusive right where for the purpose of constructing a network or facilities referred to in the second column of Schedule 1, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over a highway.

## **Suppliers, contractors and services providers.**

4. (1) For the purposes of these Regulations –

- (a) a “supplier” means a person who sought, or who seeks, or would have wished, to be the person to whom a supply contract is awarded;
- (b) a “contractor” means a person who sought, or who seeks, or would have wished, to be the person to whom a works contract is awarded; and
- (c) a “services provider” means a person who sought or who seeks, or who would have wished–
  - (i) to be the person to whom a services contract is awarded, or
  - (ii) to participate in a design contest, and

in every case, is a person who is a national of and established in a relevant State.

(2) In these Regulations, a relevant State is a member State or a State listed in Schedule 2 hereto.

(3) When these Regulations apply, a utility shall not discriminate between providers; and, it 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 the Regulations.**

5. (1) These regulations shall apply whenever a utility seeks offers in relation to a proposed supply, works or Part A services contract other than a

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contract excluded from the operation of these Regulations by regulation 6, 7, 8 or 10 below.

(2) Whenever a utility seeks offers in relation to a proposed Part B services contract other than one excluded by virtue of regulation 6, 7, 8 or 10 below, Part I (General) and Part VII (Applications to the court) apply but only the following provisions in Parts II to VI apply –

regulation 12 (Technical specifications in contract documents);

regulation 23 (Contract award notice);

regulation 27(2) (Statistical and other reports);

regulation 28 (Provision of reports);

regulation 29 (Publication of notices).

#### **General exclusions.**

6. These Regulations shall not apply to the seeking of offers in relation to a contract –

- (a) other than for the purpose of carrying out an activity specified in the Part of Schedule 1 in which the utility is specified;
- (b) for the purpose of carrying out an activity outside the territory of the Communities, but only if the carrying out of that activity does not involve the physical use of a network or geographical area within the Communities;
- (c) for the purpose of acquiring goods, works or services in order to sell, hire or provide them to another person, unless the utility has a special or exclusive right to sell, hire or provide such goods, works or services, or other persons are not free to sell, hire or provide them under the same conditions;
- (d) 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 the agreement is applicable to Gibraltar, and it relates to goods, or provides for the carrying out of works, or the provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement;

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- (ii) 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;
- (e) by a utility which engages in an activity specified in Part A, B or C of Schedule 1 for the purchase of water;
- (f) by a utility which engages in an activity specified in Parts D to G of Schedule 1 for the purchase of energy or of fuel for the production of energy;
- (g) by a utility specified in Column 1 of Part J of Schedule 1, for the purpose of engaging in an activity specified in Column 2 of that Part of that Schedule, where that activity is provided in a geographical area in which other persons are free to provide the service under the same conditions as the utility;
- (h) under which services are to be provided by a contracting authority within the meaning of the Public Services Contracts Regulations 1996, or by a person which is a contracting authority in another relevant State for the purposes of Council Directive 92/50/EEC, 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 *acquis communautaire*;
- (j) 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;
- (k) for voice telephony, telex, radiotelephony, paging or satellite services;
- (l) for arbitration or conciliation services;
- (m) for the issue, purchase, sale or transfer of securities or other financial instruments;
- (n) for research and development services unless –
  - (i) the benefits are to accrue exclusively to the utility for its use in the conduct of its own affairs, and

- (ii) the services are to be wholly paid for, by the utility.

**Exclusion in respect of certain contracts awarded by utilities operating in the telecommunications sector.**

7. (1) These Regulations shall not apply to the seeking of offers in relation to a contract by a utility specified in Part K of Schedule 1, intended exclusively to enable it to provide one or more public telecommunications services where other entities are free to offer the same services, in the same geographical area and under substantially the same conditions.

(2) A utility when requested by the Commission, shall notify it of any public telecommunications services provided by it, which it considers are excluded by sub-regulation (1) above.

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

**Exclusion of services contracts awarded to affiliated undertakings.**

8. (1) For the purposes of this regulation –

(a) an “affiliated undertaking” means–

(i) in respect of a utility which is subject to the seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts, any undertaking the accounts of which are consolidated with those of that utility;

(ii) in any other case, any undertaking which is either a parent undertaking, a subsidiary undertaking or a fellow subsidiary undertaking of the utility, and–

(aa) an undertaking is a parent undertaking of a utility if it exercises a dominant influence over it, directly or indirectly, and, for these purposes, an undertaking will exercise a dominant influence over another if –

(i) it possesses the greater part of the issued share capital of that undertaking or controls the majority of the voting power attached to the issued share capital of that undertaking, or

- (ii) it may appoint more than half of the individuals who are ultimately responsible for managing the affairs of that company,

and, an undertaking is a subsidiary undertaking of a utility, if the utility exercises such dominant influence over it;

- (bb) an undertaking is a fellow subsidiary undertaking of a utility if both are subsidiary undertakings of the same parent undertaking;

- (b) a “relevant affiliated undertaking” is one which has, as one of its activities, the provision of services, and which provides those services principally to one or more of its affiliated undertakings: without prejudice to the determination of whether services are principally provided to affiliated undertakings in other cases, in the case of an undertaking which has been in existence for 36 months or more, it shall be taken to be so if, for the preceding 36 months, 80% or more of the average turnover of—

- (i) the undertaking, or
- (ii) it and of any affiliated undertaking,

in respect of the provision of services of the type or similar to those to be provided under the contract within member States, was derived from the provision of those services to affiliated undertakings.

- (2) These Regulations shall not apply to the seeking of offers in relation to a services contract which –

- (a) a utility proposes to award to a relevant affiliated undertaking, or
- (b) a joint venture formed for the purpose of carrying out any of the activities specified in the second column of Schedule 1 proposes to award to one of its members which is a utility or to a relevant affiliated undertaking of such a member.

- (3) A utility which relies on the exclusion in sub-regulation (2) above, shall, if the Commission requests it, send to the Financial & Development Secretary for onward transmission, the following information –

- (a) the names of the undertakings concerned;

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- (b) the value of the consideration, and the type of services to be provided under any services contract so excluded; and
- (c) any information which is necessary to justify the use of the exclusion.

**Exemption in respect of certain utilities operating in the energy sector.**

9. (1) Where the Commission has decided that an activity specified in Schedule 1 to these Regulations is not to be considered an activity defined in Article 2(2)(b)(i) of Council Directive 93/38/EEC, and that entities undertaking that activity shall not be considered as operating under special or exclusive rights by virtue of Article 2(3)(b) of that Directive, a utility need not comply with Parts II to V of these regulations and regulations 24, 25, 26, 27 other than sub-regulation (2)(a), 29 and 31 below in seeking offers in relation to a contract to be awarded for the purpose of carrying out any activity referred to in that decision.

(2) A utility which relies on the exemption in paragraph (1) above shall observe the principles of non-discrimination and competitive procurement, and in particular shall –

- (a) hold a competition unless it can objectively justify not doing so; and
- (b) in making information about its procurement intentions available to providers, in specifying its requirements to them, in establishing and using a qualification system, in selecting providers to tender for or to negotiate the contract, in holding any design contest and in awarding the contract, make decisions objectively on the basis of relevant criteria.

(3) A utility which relies on the exemption in sub-regulation (1) above shall –

- (a) in respect of a contract awarded by it the value of which, calculated in accordance with regulation 10 below, exceeds 5,000,000 ECU, send to the Financial & Development Secretary, for onward transmission to the Commission no later than 48 days after the award, the following information –
  - (i) the name and address of the utility;
  - (ii) the nature of the contract, namely whether it is a supply, works or services contract and whether it is a framework agreement;



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- (iii) a clear indication of the nature of the goods, work, works or services to be provided (for example, by using the Classification of Products by Activity);
  - (iv) whether the contract was advertised and, if so, in which publication and, if not, the procedure or method used to decide to whom the contract should be awarded;
  - (v) the number of offers received;
  - (vi) the date of the award of the contract;
  - (vii) the name and address of the person to whom the contract was awarded;
  - (viii) the value of the contract, calculated in accordance with regulation 10 below;
  - (ix) the expected duration of the contract;
  - (x) any share of the contract which has been, or may be, sub-contracted to which over 10% of the value of the consideration to be given under the contract is attributable;
  - (xi) in the case of a supply contract, the country of origin of the goods, and, in the case of a works or services contract, the principal country from which the contract is to be performed;
  - (xii) where the contract was awarded on the basis of the offer which was the most economically advantageous, the main criteria on which the decision was based; and
  - (xiii) whether the contract was awarded to a person who offered a variant on the requirements specified in the contract documents; and
- (b) in respect of a supply or services contract awarded by it, the value of which, calculated in accordance with regulation 10 below, equals or exceeds 400,000 ECU but does not exceed 5,000,000 ECU –
- (i) retain the information specified in sub-paragraph (a)(i) to (ix) above for not less than 4 years after the award; and
  - (ii) either –

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- (aa) if the Commission requests that information in relation to any such contract, forthwith send it to the Financial & Development Secretary for onward transmission, or
- (bb) where no such request has been made, send that information to the Financial & Development Secretary for onward transmission to the Commission no later than 48 days after the end of the period of 3 months ending on the last day of March, June, September or December in which the contract was awarded.

#### Thresholds.

10. (1) These Regulations shall not apply to the seeking of offers in relation to a proposed contract where the estimated value of the contract at the relevant time is less than the relevant threshold.

(2) The relevant threshold for the purposes of sub-regulation (1) above –

- (a) in relation to a supply or services contract to be awarded by a utility other than one specified in Part K of Schedule 1, is 400,000 ECU;
- (b) in relation to a supply or service contract to be awarded by a utility specified in Part K of Schedule 1, is 600,000 ECU; and
- (c) in relation to a works contract, is 5,000,000 ECU.

(3) Subject to sub-regulations (5), (7), (10), (11), (12), (13), (16) and (18) below in the case of a supply contract, subject to sub-regulations (8), (9), (14), (15) and (18) below in the case of a works contract, and subject to sub-regulations (4), (6), (7), (10), (11), (12), (13), (16) and (18) below in the case of a services contract, the estimated value of a contract for the purposes of sub-regulation (1) above shall be the value of the consideration which the utility expects to be payable under the contract.

(4) In determining the value of the consideration which the utility expects to be payable under a services contract it shall, where appropriate, take account of –

- (a) the premium payable for insurance services,
- (b) the fees, commissions or other remuneration payable for banking and financial services, and

- (c) the fees or commissions payable for design services.

(5) The estimated value for the purposes of sub-regulation (1) above of a supply contract for the hire of goods for an indefinite period, or for a period which is uncertain at the time the contract is entered into, shall be the value of the consideration which the utility expects to be payable in respect of the first four years of the hire.

(6) The estimated value for the purposes of sub-regulation (1) above of a services contract under which services are to be provided over a period exceeding 4 years or over an indefinite period, in cases where the contract does not indicate a total cost, shall be the value of the consideration which the utility expects to be payable in respect of each month of the period multiplied by 48.

(7) Subject to sub-regulation (12) below, where a utility has a single requirement for goods or services, and a number of supplies or services contracts have been entered into or are to be entered into to fulfill that requirement, the estimated value for the purposes of sub-regulation (1) above of each of those contracts shall be the aggregate of the value of the consideration which the utility expects to be payable under each of those contracts.

(8) Subject to sub-regulation (9) below, where a utility proposes to enter into two or more contracts for the carrying out of a work, the estimated value for the purposes of sub-regulation (1) above of each of those contracts shall be the aggregate of the value of the consideration which the utility expects to be payable under each of those contracts.

(9) Sub-regulation (8) above shall not apply to any works contract (unless the utility chooses to apply that sub-regulation to that contract if that contract has an estimated value (calculated in accordance with sub-regulation (3) above) of less than 1,000,000 ECU, and the aggregate value of that contract, and of any other contract in respect of which the utility takes advantage of the disapplication of sub-regulation (8) above by virtue of this sub-regulation, is less than 20 per cent of the aggregate of the value of the consideration which the utility has given or expects to be payable under all the contracts entered, or to be entered into for the carrying out of the work.

(10) Subject to sub-regulation (12) below, where a utility has a requirement over a period –

- (a) for the purchase or hire of goods of the type to be purchased or hired under the contract; or
- (b) for services of the type to be provided under the contract, and, for that purpose, enters into –

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

the estimated value, for the purposes of sub-regulation (1) above, of the contract shall be the amount calculated under sub-regulation (11) below.

(11) The utility shall calculate the amount referred to in sub-regulation (10) above either –

- (a) by taking the aggregate of the value of the consideration payable under contracts which have similar characteristics, and, which are for the purchase or hire of goods of the type to be purchased or hired under the contract or for the provision of services of the type to be provided under the contract, during the last financial year of the utility ending before, or the period of 12 months ending immediately before, the relevant time, and by adjusting that amount to take account of any expected changes in quantity and cost of the goods to be purchased or hired or services to be provided in the period of 12 months commencing with the relevant time, or
- (b) by estimating the aggregate of the value of the consideration which the utility expects to be payable under contracts which have similar characteristics, and which are for the purchase or hire of goods of the type to be purchased or hired under the contract, or for the provision of services of the type to be provided under the contract, during the period of 12 months from the first date –
  - (i) of delivery of the goods to be purchased or hired, in the case of supply contracts; or
  - (ii) on which the services will be performed, in the case of services contracts,

or, where the contract is either a supply or services contract for a definite term of more than 12 months, during the term of the contract.

(12) Notwithstanding sub-regulations (7) and (10) above, in relation to a supply or services contract, when the goods to be purchased or hired or the services to be provided under the contract are required for the sole purposes of a discrete operational unit within the organisation of a utility and –

- (a) the decision whether to procure the goods or services has been devolved to such a unit, and

- (b) that decision is taken independently of any other part of the utility,

the valuation methods described in sub-regulations (7) and (11) above shall be adapted by aggregating only the value of the consideration which was payable or the utility expects to be payable, as the case may be, under contracts for the purchase or hire of goods or for the provision of services which were or are required for the sole purposes of that unit.

(13) Where a supply contract or a services contract includes one or more options, the estimated value of the contract shall be determined by calculating the highest possible amount which could be payable under the contract.

(14) Where a utility intends to provide any goods or services to the person awarded a works contract for the purpose of carrying out that contract, the value of the consideration for the purposes of sub-regulations (3) and (8) above shall be taken to include the estimated value at the relevant time of those goods and services.

(15) Where the estimated value of a works contract is less than the threshold, and where goods or services which are not necessary for its execution are to be purchased, hired or provided under it, the estimated value of the contract for the purposes of sub-regulation (1) above shall be the value of the consideration which the utility expects to give for the goods and services, and the relevant contract shall be treated as a supply or services contract, as appropriate.

(16) Where, under a contract, both goods are to be purchased or hired and services are to be provided, the estimated value of the contract shall be the aggregate values of the consideration attributable to the purchase or hire of the goods including any siting and installation of the goods and of the consideration attributable to the provision of the services, regardless of whether the estimated value of either the goods or services is less than the threshold specified in sub-regulation (2) above.

(17) The estimated value of a framework agreement shall be the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement.

(18) A utility shall not enter into separate contracts nor select nor exercise a choice under a valuation method in accordance with sub-regulation (11) above with the intention of avoiding the application of these, regulations to those contracts.

(19) The relevant time for the purposes of sub-regulations (1), (11) and (14) above means –

- (a) if the utility selects providers to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 18, the date on which the selection commences; or
- (b) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with regulation 15(2)(a)(i), the date on which the notice is sent to the Official Journal; or
- (c) in any other case, the date on which a contract notice would be sent to the Official Journal if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by sending such a notice.

**Framework agreements.**

11. (1) A utility which is proposing to enter into a framework agreement may choose to treat that agreement as a contract to which these Regulations apply: accordingly, in respect of such an agreement, references in these Regulations to a contract shall include a reference to such a framework agreement.

(2) A utility which chooses to treat a framework agreement as a contract under sub-regulation (1) above shall not use the framework agreement to hinder, limit or distort competition.

**PART II**  
**TECHNICAL SPECIFICATIONS**

**Technical specifications in contract documents.**

12. (1) In this regulation –

“common technical specification” means a technical specification drawn up in accordance with a procedure recognised by the member States with a view to uniform application in all member States and which has been published in the Official Journal;

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

“European specification” means a common technical specification, a British Standard or a Standard of relevant State implementing or

conforming to a European standard or a European technical approval;

“European standard” means a standard approved by the European Committee for Standardisation (“CEN”) or by the European Committee for Electrotechnical Standardisation (“CENELEC”) as a “European Standard (“EN”)” or a “Harmonisation Document” (“HD”)” according to the Common Rules of those organisations or by the European Telecommunications Standards Institute (“ETSI”) according to its own rules, as a “European Telecommunications Standard (“ETS”)”;

“European technical approval” means an approval of the fitness of a product for a particular use, issued by an approved body designated for the purpose by a member State, following a technical assessment of whether the product fulfills the essential requirements for building works, having regard to the inherent characteristics of the product and the defined conditions of application and use, as provided for in Council Directive 89/106/EEC on the approximation of laws, regulations and administrative procedures in the member States relating to construction projects;

“standard” means a technical specification approved by a recognised standardising body for repeated and continuous application, a compliance with which is in principle not compulsory;

“technical specifications” means the technical requirements defining the characteristics required of the work or works, materials, goods or services to be supplied or used in or for it or them (such as quality, performance, safety or dimensions) so that the works, work, materials, goods or services are described objectively, in a manner which will ensure the use for which they are intended by the utility. In relation to materials, goods and services, “technical specifications” include requirements in respect of quality assurance, terminology, symbols, test and testing methods, packaging, marking and labeling. In relation to a work or works, they include requirements relating to design and costing, the testing, inspection and acceptance of the work or works, the methods or techniques of construction and all other technical conditions.

(2) If a utility wishes to lay down technical specifications, it shall specify all such technical specifications in the contract documents.

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

(4) A utility may define the technical specifications referred to in sub-regulation (3) above other than by reference to relevant European specifications if –

- (a) the utility is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in Gibraltar (but only to the extent that such an obligation is compatible with Community obligations);
- (b) it is technically impossible to establish satisfactorily that the services, goods, materials, work or works do conform to the relevant European specifications;
- (c) definition by reference to European specifications would conflict with the application of Council Directive 86/361/EEC on the initial stage of the mutual recognition of type approval for telecommunications terminal equipment or Council Decision 87/95/EEC on standardisation in the field of information technology and telecommunications;
- (d) subject to sub-regulation (5) below, application of European specifications would oblige the utility to acquire or use a work, works or goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties;
- (e) subject to sub-regulation (6) below, the relevant European specification is inappropriate for the particular purpose or it does not take account of technical developments which have come about since its adoption; or
- (f) the project for which the contract is to be entered into is of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

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

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



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(7) A utility shall state in any contract notice sent pursuant to regulation 15(2)(b) or periodic indicative notice sent pursuant to regulation 14, which of the circumstances specified in sub-regulation (4) above was the ground for defining the technical specifications other than by reference to European specifications.

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

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

(10) Subject to sub-regulation (12) below, 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 providers.

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

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

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

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

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(14) Where the technical specifications referred to in sub-regulation (13) above are based on documents which are available to providers, the obligations in sub-regulation (13) shall be satisfied by informing any provider who requests it of the documents which include those technical specifications.

### PART III

#### PROCEDURES LEADING TO THE AWARD OF A CONTRACT

##### **The open, restricted and negotiated procedures.**

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

##### **Periodic indicative notices.**

14. (1) Subject to sub-regulations (2) and (3) below, a utility shall, at least once every 12 months, send to the Official Journal, a notice, in a form substantially corresponding to that set out in Part A of Schedule 5 and containing the information therein specified, in respect of –

- (a) the supply and services contracts which the utility expects to award during the period of 12 months beginning with the date of the notice, and, in respect of such contracts the notice shall be sub-divided to give that information separately for each product area of goods or each category of services specified in Part A of Schedule 4; and
- (b) the works contracts which the utility expects to award.

(2) The obligation under sub-regulation (1) above shall apply only to –

- (a) supply and Part A services contracts where, at the date of despatch of the notice, the total consideration which the utility expects to be payable under –
  - (i) supply contracts for the purchase or hire of goods falling within the same product area; or
  - (ii) services contracts for the provision of services falling within the same category specified in Part A of Schedule 4;

equals or exceeds 750,000 ECU;

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- (b) works contracts whose estimated value at the date of despatch of the notice is not less than the relevant threshold specified in regulation 10(2);

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

### **Call for competition.**

15. (1) Subject to regulation 16 below, for the purposes of seeking offers in relation to a proposed contract, a utility shall make a call for competition.

(2) The requirement under sub-regulation (1) above to make a call for competition shall be satisfied –

- (a) in the case of a contract to be awarded using the restricted or negotiated procedure –

- (i) if the intention to award the contract has been indicated in a periodic indicative notice and the requirements referred to in sub-regulation (3) below are satisfied in relation to the contract; or

- (ii) if a notice indicating the existence of a qualification system for providers has been sent to the Official Journal in accordance with regulation 18(12) and the requirement referred to in sub-regulation (4) below is satisfied; or

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

- (i) Part B of Schedule 5, in the case of a contract to be awarded using the open procedure,

- (ii) Part C of Schedule 5, in the case of a contract to be awarded using the restricted procedure, and

- (iii) Part D of Schedule 5, in the case of a contract to be awarded using the negotiated procedure,

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

(3) The requirements referred to in sub-regulation (2)(a)(i) above are that–

- (a) the periodic indicative notice refers specifically to the goods, works or services which are to be the subject of the proposed contract;
- (b) the notice states that offers are to be sought using the restricted or negotiated procedure without further publication of a notice calling for competition, and invites providers to express their interest in writing;
- (c) the utility sends to all providers, who express such an interest, detailed information on the contract concerned, and, before beginning the selection of providers, invites them to confirm their wish to be selected to tender for, or to negotiate the contract; and
- (d) the notice was not published more than 12 months before the date on which the invitation is sent, in accordance with subparagraph (c) above.

**Award without a call for competition.**

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

- (a) in the absence of tenders or suitable tenders in response to a procedure with a call for competition, but only if the original terms of the proposed contract have not been substantially altered;
- (b) when the contract is to be awarded purely for the purposes of research, experiment, study or development but not where it has the purpose of ensuring profit, or of recovering research and development costs, and, insofar as its award will not prejudice the competitive award of subsequent contracts which are, in particular, for the same purposes;
- (c) when for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may only be performed by a particular person;
- (d) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the utility, the time limits specified in regulation 17(1) to (4) below cannot be met;
- (e) when the contract to be awarded is a supply contract and the goods to be purchased or hired under the contract are required

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by the utility as a partial replacement for, or in addition to, existing goods or an installation, when to obtain the goods from a person other than the person who supplied the existing goods or the installation would oblige the utility to acquire goods having different technical characteristics which would result in –

- (i) incompatibility between the existing goods or installation and the goods to be purchased or hired under the contract, or
  - (ii) disproportionate technical difficulties in the operation and maintenance of the goods or installation;
- (f) when the contract to be awarded is a works or services contract and the utility wants a person who has entered into a works or services contract with the utility to carry out additional works or provide additional services which were not included in the project initially considered, or in the original work or services contract, but which, through unforeseen circumstances, have become necessary and –
- (i) such works or services cannot, for technical or economic reasons, be carried out or provided separately from those under the original contract without great inconvenience to the utility, or
  - (ii) such works or services can be carried out or provided separately from those under the original contract, but are strictly necessary to the later stages of the performance of that contract;
- (g) subject to sub-regulation (2) below, when the contract to be awarded is a works contract, and the utility wishes a person who has entered into a works contract with it following a call for competition which satisfies the requirement of regulation 15(1) to carry out new works which are a repetition of works carried out under the original contract, and, which are in accordance with the project for the purpose of which the first contract was entered into;
- (h) in respect of a supply contract for the purchase or hire of goods quoted and purchased on a commodity market;
- (j) when the contract to be awarded is to be awarded under a framework agreement which has been awarded in accordance with these Regulations, and to which the provisions of regulation 11 apply;

- (k) when the contract to be awarded is a supply contract, to take advantage of a particularly advantageous bargain available for a very short period of time at a price considerably lower than normal market prices;
  - (l) when the contract to be awarded is a supply contract, to take advantage of particularly advantageous conditions for the purchase of goods in a closing down sale or in a sale brought about by insolvency; and
  - (m) in the case of service contracts, 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 selected to negotiate the contract.
- (2) A utility shall not seek offers without a call for competition pursuant to sub-regulation (1)(g) above unless –
- (a) the original contract was awarded after a call for competition;
  - (b) when the utility contractors to tender for, or to negotiate the contract it gave notice that a works contract for new works which would be a repetition of the works carried out under the original contract, might be awarded without a call for competition pursuant to sub-regulation (1)(g) above, and
  - (c) in determining the estimated value of the original contract for the purposes of regulation 10 above, the utility took into account the value of the consideration which it expected to be payable for the new works.

**Time limits.**

17. (1) Subject to sub-regulation (2) below, the date which a utility using the open procedure shall fix as the last date for the receipt by it of tenders made in response to the contract notice, shall be specified in the notice, and shall be not less than 52 days from the date of despatch of the notice.

(2) When the utility has published a periodic indicative notice in accordance with regulation 14(1), it may substitute for the period of not less than 52 days specified in sub-regulation (1) above, a period of not less than 36 days.

(3) The date which a utility using the restricted or the negotiated procedure with a call for competition shall fix as the last date for the receipt by it of requests to be selected to tender for, or to negotiate the contract shall be specified in the contract notice or, where the call for competition is

made by means of a periodic indicative notice, in the invitation to providers made in accordance with regulation 15(3)(c), and shall, in general, be at least five weeks from the date of the despatch of the notice or invitation, and shall, in any case not less than 22 days from that date, apart from when regulation 29(3) applies when it shall be not less than 15 days.

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

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

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

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

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

- (a) the address to which requests for any further information should be sent, the final date for making such a request and the amount and method of payment of any fee which may be charged for supplying that information;
- (b) the final date for the receipt of tenders, the address to which they must be sent and the language or languages in which they must be drawn up;
- (c) a reference to any contract notice;
- (d) an indication of the information to be included with the tender;
- (e) the criteria for the award of the contract if this information was not specified in the contract notice; and

(f) any further special contract condition.

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

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

**PART IV**  
**QUALIFICATION AND SELECTION OF PROVIDERS**

**Qualification system for providers.**

18. (1) A utility may establish and operate a system of qualification of providers if that system complies with the following paragraphs of this regulation.

(2) The system may involve different stages of qualification, and shall be based on objective rules and criteria as determined from time to time by the utility using European standards (within the meaning of regulation 12(1) as a reference, when they are appropriate.

(3) The rules and criteria shall be made available on request to providers, and any amendment of those rules and criteria shall be sent to them as the amendment is incorporated into the system.

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

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



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

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

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

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

(10) The utility may cancel the qualification of a provider who has qualified under the qualification system, only if he does not continue to meet the rules and criteria laid down in accordance with sub-regulation (2) above.

(11) The utility may not cancel a qualification unless it notified the provider in writing beforehand of its intention, and of the reason or reasons for the proposed cancellation.

(12) The utility shall send a notice substantially corresponding to the form set out in Part E of Schedule 5, and containing the information relating to the qualification system therein specified to the Official Journal when the system is first established and, if the utility expects to operate the system for more than three years, or if it has operated the system for more than three years, it shall send additional notices annually.

#### **Selection of providers in the restricted and negotiated procedures**

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

(2) The criteria which a utility uses for deciding not to select a provider may include the following, namely that the provider –

- (a) being an individual is bankrupt or has had a receiving order made against him or has made any composition or arrangement

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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 Part V of the Companies Act, as the case may be, or is the subject of any similar procedure under the law of any part of the United Kingdom or of any other state;

- (b) being a company, has passed a resolution, or is the subject of an order by the court for the company's winding up otherwise than for the purposes of bona fide reconstruction or amalgamation, or has had a receiver on behalf of a creditor appointed in respect of the company's business or any part thereof, or is the subject of proceedings for any of the above procedures or is the subject of similar procedures under the law of any Part of the United Kingdom or of any other 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 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 provider is established; or
- (g) is guilty of serious misrepresentation in providing information to the utility.

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

(4) For the purposes of assessing a services provider's technical capacity, a utility may ask that services provider to provide any certificate that the services of the services provider to be provided under the contract, conform to any certificate of an independent body established in any relevant State conforming to the EN 45000 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

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certificate, or cannot obtain such a certificate within the relevant time limits, any other evidence of conformity to equivalent quality assurance standards.

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

### **Consortia and corporations.**

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

(2) A utility shall not treat the tender of a consortium as ineligible, nor decide not to include a consortium amongst those persons from whom it will make the selection of persons to be invited to tender for, or to negotiate a contract on the grounds that the consortium has not formed a legal entity for the purpose of tendering for, or negotiating the contract: but where a utility awards a contract to a consortium, it may, if to do so is justified for the satisfactory performance of the contract, require the consortium to form a legal entity before entering into, or as a term of, the contract.

(3) In these Regulations, references to a provider where the provider is a consortium, include a reference to each person who is a member of that consortium.

(4) A utility shall not treat the tender of a services provider as ineligible, or 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, corporation or other type of body if, under the law of any part of the United Kingdom or of the relevant State in which the services provider is established, he is authorised to provide such services.

(5) A utility 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 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 CONTRACT**

#### **Criteria for the award of a contract.**

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21. (1) Subject to regulation 22, a utility shall award a contract, on the basis of the offer which –

- (a) is the most economically advantageous to the utility; or
- (b) offers the lowest price.

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

(3) Where a utility intends to award a contract on the basis of the offer which is the most economically advantageous, it shall state the criteria on which it intends to base its decision, where possible, in descending order of importance, in any contract notice or in the contract documents.

(4) Where a utility awards a contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if –

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

but if the utility will not take account of offers which offer such variations, it shall state that fact in the contract documents.

(5) A utility may not reject a tender on the ground that the tender is based on, or the technical specifications in the tender have been defined, by reference to European specifications (within the meaning of regulation 12(1)) or national technical specifications recognised as complying with the essential requirements of Council Directive 89/106/EEC on the approximation of laws, regulations and administrative procedures in the member States relating to construction products.

(6) If a utility wishes to reject an offer for a contract because it is abnormally low, it may do so only if it has requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low, which request may set a reasonable period for a reply, and has –

- (a) if awarding the contract on the basis of the offer which offers the lowest price, examined the details of all the offers made,

taking into account any explanation given to it of the abnormally low offer, before awarding the contract; or

- (b) if awarding the contract on the basis of the offer which is the most economically advantageous, taking into account any such explanation in assessing which is the most economically advantageous offer,

and, in considering that explanation, the utility may take into account explanations which justify the offer on objective grounds, including the economy of the construction or production method, the technical solutions suggested by the provider or the exceptionally favourable conditions available to the provider for the performance of the contract or the originality of the goods, work or services proposed by the provider.

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

(8) A utility which rejects a tender in accordance with sub-regulation (7) above, shall send a report to the Financial & Development Secretary for onward transmission to the Commission.

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

## **Rejection of third country offers.**

22. (1) In this regulation an offer of third country origin is an offer to enter a supply contract under which more than 50% of the value of the goods offered originate, as determined in accordance with Council Regulation (EC) No. 802/68, in States with which the Communities have not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings in member States, to the markets of those States or in States to which the benefit of the provisions of Council Directive 93/38/EEC has not been extended.

(2) Notwithstanding regulation 21, a utility need not accept an offer of third country origin.

(3) Notwithstanding regulation 21, where an offer of third country origin is equivalent to an offer which is not of third country origin, a utility shall not accept the offer of third country origin unless not to accept that offer

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would oblige the utility to acquire goods having technical characteristics different from those of existing goods or an installation resulting in incompatibility, technical difficulties in operation and maintenance or disproportionate costs.

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

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

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

#### **Contract award notice.**

23. (1) A utility which has awarded a supply, works or Part A or Part B of Schedule 4 services contract (other than one excluded or exempted from the application of these Regulations, by regulations 6 to 10) shall, no later than two months after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part F of Schedule 5 and including the information therein specified.

(2) A utility may indicate that any of the information included in paragraphs 6 and 9 of the contract award notice is of a sensitive commercial nature, and require that it be not published or, in the case of a Part B of Schedule 4 services contract, state in the contract award notice whether it agrees to the notice's publication.

(3) Where a utility has awarded a services contract for services falling within category 8 of Part A of Schedule 4 it may, if the contract was awarded in accordance with regulation 16(1)(b), insert, in paragraph 3 of the contract award notice, only the title of the category of services: if the services contract was not awarded in accordance with regulation 16(1)(b), the utility may provide limited information at paragraph 3 of the contract award notice if the information which would otherwise be given is of a commercially sensitive nature, provided that the information given is no less detailed than that already provided in either its call for competition, in

accordance with regulation 15(2), or where a qualification system is used, than that recorded in accordance with regulation 18(9).

**PART VI**  
**MISCELLANEOUS**

**Obligations relating to employment protection and working conditions.**

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

**Sub-contracting.**

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

**Preservation of records.**

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

- (a) the qualification and selection of providers and the award of contracts;
- (b) the recourse to derogations from the requirement that European specifications be referred to pursuant to regulation 12(4); and
- (c) the use of a procedure without a call for competition pursuant to regulation 16.

(2) When a utility decides not to apply these Regulations to the seeking of offers in relation to a contract in accordance with regulation 6, 7, 8 or 10, it shall keep appropriate information on such a contract sufficient to justify that decision.

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

**Statistical and other reports.**

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27. (1) A utility shall, each year, by the date notified to it by the Financial Secretary, send to the Financial Secretary a report specifying the aggregate value, (estimated if necessary) of the consideration payable under contracts awarded in the previous year which have been excluded from the operation of these regulations by regulation 10 (Thresholds) for the purpose of carrying out the activities in each Part of Schedule 1 in which the utility is specified.

(2) A utility, when requested, shall for the purpose of informing the Commission, send to the Financial Secretary a report –

- (a) containing such information as the Financial Secretary, may from time to time require, in respect of a particular contract (including contracts excluded or exempted from the application of all or some of these Regulations by regulations 6 to 10);
- (b) specifying which of its activities it considers are not activities specified in the Part of Schedule 1 in which the utility is specified, or are activities outside the territory of the Communities not involving the physical use of a network or geographical area within the Communities; and
- (c) specifying the categories of goods, works or services it considers comprise the goods, works or services which it acquires in order to sell, hire or provide them to another person, but which it does not have a special or exclusive right to sell, hire or provide and which other persons are free to sell, hire or provide under the same conditions.

(3) A utility may indicate that any of the information included in a report sent to the Financial Secretary pursuant to sub-regulation (2)(c) above is of a sensitive commercial nature, and require that it be not published.

#### **Provision of reports.**

28. (1) The requirement on a utility to send any report in accordance with regulations 8(3), 9(3)(b)(ii)(aa), 21(8) and 27 to the Financial Secretary shall be enforceable, on the application of the Financial Secretary, by an order for specific performance.

(2) The Financial Secretary to whom a report is sent in accordance with regulations 8(3), 9(3)(b)(ii)(aa), 21(8) and 27 shall take the necessary steps to ensure its onward transmission to the Commission.

#### **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 at the following address—

Office for Official Publications of the European  
Communities  
2, rue Mercier  
L-2985, Luxembourg  
Telephone: 499 28-1  
Telex: 324 PUBOF LU,  
Facsimile: 292942 670  
490003  
495719

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

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

(4) The utility may publish the information contained in a contract notice or notice of a design contest in accordance with regulation 31(2) in such other way as it thinks fit, but it shall not do so until the notice has been despatched in accordance with sub-regulation (1) above and shall not publish any information other than that contained in the notice.

**Confidentiality of information.**

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

**Design contests.**

31. (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 services contract other than a contract excluded from the operation of these Regulations by regulation 6, 7, 8 or 10 above, or
- (b) whether or not it is organised as part of a procedure leading to the award of such a contract if—

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- (i) the contest is conducted for the purpose of carrying out an activity specified in any Part of Schedule 1 in which the utility is specified, and
  - (ii) the aggregate of the value of the prizes or payments for the contest is not less than 400, 000 ECU, unless the utility is one specified in Part T of Schedule 1 in which case the aggregated value shall not be less than 600, 000 ECU.
- (2) The utility 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 G of Schedule 5 and containing the information therein specified.
- (3) The utility shall make the rules of the design contest available to services providers who wish to participate in the contest.
- (4) The utility 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 utility shall take account of the need to ensure adequate competition in determining the number of persons invited to participate in the design contest.
- (6) Sub-regulations (2), (4) and (5) of regulation 20 apply to design contests as they apply to the seeking of offers in relation to a proposed services contract.
- (7) The utility shall provide for the participants' proposals to be submitted to the jury without any indication as to the authorship of each proposal.
- (8) The utility 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 utility 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) above.
- (10) The utility shall, no later than 2 months after the date by which the jury makes 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 H of Schedule 5 and including the information therein specified.

**PART VII**

**APPLICATIONS TO THE COURT AND CONCILIATION**

**Enforcement of obligations.**

32. (1) The obligation on a utility to comply with the provisions of these regulations other than regulations 7(2), 21(8) and 27, and, with any enforceable Community obligation in respect of a contract (other than one excluded from the application of these regulations by regulation 6, 7, 8 or 10), is a duty owed to providers.

(2) A breach of the duty owed pursuant to sub-regulation (1) shall not be a criminal offence, but any breach of the duty shall be actionable by any provider who, in consequence, suffers, or risks suffering, loss or damage.

(3) Proceedings under this regulation shall be brought in the Supreme Court.

(4) Proceedings under this regulation may not be brought unless –

- (a) the provider bringing the proceedings has informed the utility of the breach or apprehended breach of the duty owed to him pursuant to sub-regulation (1) above by that utility, and of his intention to bring proceedings under this regulation in respect of it; and
- (b) they are brought promptly, and in any event, within 3 months from the date when grounds for the bringing of the proceedings first arose unless the Court considers that there is good reason for extending the period within which proceedings may be brought.

(5) Subject to sub-regulation (6) below, but otherwise without prejudice to any other powers of the court, in proceedings brought under this regulation, the Court may –

- (a) by interim order, suspend the procedure leading to the award of the contract in relation to which the breach of the duty owed pursuant to (1) above is alleged, or suspend the implementation of any decision or action taken by the utility in the course of following such a procedure; and
- (b) if satisfied that a decision or action taken by a utility was in breach of the duty owed pursuant to sub-regulation (1) above –

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- (i) order the setting aside of that decision or action or order the utility to amend any document, or
- (ii) award damages to a provider who has suffered loss or damage as a consequence of the breach, or
- (iii) do both of those things.

(6) In proceedings under this regulation, the Court shall not have power to order any remedy other than an award of damages in respect of a breach of the duty owed pursuant to sub-regulation (1) above, if the contract, in relation to which the breach occurred, has been entered into.

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

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

(9) Notwithstanding any statutory provision or rule of law, in proceedings brought under this regulation against the Crown, the Court shall have power to grant an injunction.

#### **Conciliation.**

33. (1) A provider who considers that –

- (a) a utility has breached or may breach the duty referred to in regulation 32(1), and
- (b) in consequence, he has suffered, or risks suffering, loss or damage,

and, who wishes to use the conciliation procedure provided for in article 10 and 11 of Council Directive 92/13/EEC, shall send a request for the application of the procedure to the Financial & Development Secretary for onward transmission as soon as possible to the Commission.

(2) Neither the request for, nor any action taken pursuant to the conciliation procedure referred to in sub-regulation (1) above shall affect

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the rights or liabilities of the provider requesting it, of the utility in respect of which the request is made, or of any other person.

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**SCHEDULE 1**

Regulation 3

**UTILITIES AND ACTIVITIES**

**PART A**

<b>Utility</b>	<b>Activity</b>
A company holding a licence or appointment as a water undertaker.	<ol style="list-style-type: none"><li>1. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of drinking water.</li><li>2. Desalination of sea-water intended for the supply of drinking water.</li><li>3. The disposal or treatment of sewage.</li></ol>

**PART B**

A relevant person not specified in Part C.	<ol style="list-style-type: none"><li>4. The supply of drinking water to a network referred to in paragraph 1 above.</li></ol>
Any other person not specified in Part C who supplies drinking water to a network which is referred to in paragraph 1 above, and which is provided or operated by a person specified in Part A.	

**PART C**

A relevant person, other than a public authority, who produces drinking water because its consumption is necessary for the	<ol style="list-style-type: none"><li>5. The supply of drinking water to a network referred to in paragraph 1 above, but only if the drinking water supplied in the period of 36 months</li></ol>
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purpose of carrying out an activity not specified in the second column of this Schedule, and who supplies only the excess to a network which is referred to in paragraph 1 above.

ending at the relevant time as defined in regulation 10(19) above, has exceeded 30% of the total produced by the utility in that period.

Any other person who is not a public authority, who produces drinking water because its consumption is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule, and who supplies only the excess to a network which is referred to in paragraph 1 above and which is provided or operated by a person specified in Part A.

### PART D

A person licensed or appointed as an electricity supplier.

6. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of electricity.

### PART E

A relevant person not specified in Part F.

7. The supply of electricity to a network referred to in paragraph 6 above.

Any other person not specified in Part F who supplies electricity to a network which is referred to in paragraph 6 above, and which is provided or operated by a person specified in Part D.

### PART F

A relevant person, other than a public authority, who produces electricity because its use is necessary for the purpose of

8. The supply of electricity to a network referred to in paragraph 6 above, but only if the electricity supplied in the period of 36 months

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carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network referred to in paragraph 6 above.

ending at the relevant time as defined in regulation 10(19) above has exceeded 30% of the total produced by the utility in that period.

Any other person who is not a public authority, who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and, who supplies only the excess to a network which is referred to in paragraph 6 above, and which is provided or operated by a person specified in Part D.

#### **PART G**

A public gas transporter

9. The provision or operation of a fixed network which provides, or will provide a service to the public in connection with the production, transport or distribution of gas.

#### **PART H**

An airport operator.

Any other relevant person

10. The exploitation of a geographical area for the purpose of providing airport or other terminal facilities to carriers by air.

#### **PART I**

A Port operator

11. The exploitation of a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea.

#### **PART J**

A person who holds a vehicle licence under the Traffic Act which

12. The operation of a network providing a service to the public in



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authorises him to provide a regular the field of transport by bus.  
passenger service within the  
meaning of that licence.

### PART K

- |                                      |  |
|--------------------------------------|--|
| A public telecommunications operator | 13. The provision or operation of a public telecommunications network. |
|                                      | 14. The provision of one or more public telecommunications services.   |

In this Schedule –

“network”, in relation to a service in the field of transport, means a system operated in accordance with conditions laid down by, or under the law, including such conditions as the routes to be served, the capacity to be made available and the frequency of the service;

“public authority” means a contracting authority within the meaning of regulation 3 of the Public Works Contracts Regulations 1996;

“public telecommunications network” has the meaning ascribed to it by regulation 2(1);

“public telecommunications services” has the meaning ascribed to it by regulation 2(1);

“public undertaking” means a person over whom one or more public authorities are able to exercise directly or indirectly a dominant influence by virtue of –

- (a) their ownership of it;
- (b) their financial participation in it; or
- (c) the rights accorded to them by the rules which govern it,

and ,in particular, a public authority shall be considered to be able to exercise a dominant influence over a person when it directly or indirectly –

- (d) possesses the majority of the issued share capital of that person, or controls the voting power attached to such majority, or

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- (e) may appoint more than half of the individuals who are ultimately responsible for managing that person's affairs, more than half its members or, in the case of a group of individuals, more than half of those individuals;

“relevant person” means a person who is –

- (a) a public authority;
- (b) a public undertaking; or
- (c) not a public authority or a public undertaking and has as one of its activities, an activity specified in the second column of this Schedule and carries out that activity on the basis of a special or exclusive right; and

“special or exclusive right” means a right deriving from authorisations granted by a competent authority when the requirement for the authorisation has the effect of reserving for one or more persons the exploitation of an activity specified in the second column of this Schedule, and, in particular, a person shall be considered to enjoy a special or exclusive right where, for the purpose of constructing a network or facilities referred to in the second column of this Schedule, it may take advantage of a procedure for the expropriation or use of property or may place network equipment on, under or over a highway.

SCHEDULE 2

Regulations 2(1) and 4

EXTENSION TO NON MEMBER STATES

Relevant States:

1. Bulgaria
2. Iceland
3. Liechtenstein
4. Norway
5. Poland
6. Romania

SCHEDULE 3

Regulation 2(1)

ACTIVITIES CONSTITUTING WORKS

<u>Classes</u>	<u>Groups</u>	<u>Sub- groups and items</u>	<u>Descriptions</u>
50	500		BUILDING AND CIVIL ENGINEERING General building and civil engineering work (without any particular specialisation) and demolition work.
		500.1	General building and civil engineering work (without any particular specialisation)
		500.2	Demolition work
	501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential.
		501.1	General building contractors
		501.2	Roofing
		501.3	Construction of chimneys, kilns and furnaces.
		501.4	Waterproofing and damp-

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		proofing
	501.5	Restoration and maintenance of outside walls (repainting, cleaning etc)
	501.6	Erection and dismantling of scaffolding
	501.7	Other specialised activities relating to construction work (including carpentry)
502	502.1	Civil Engineering: construction of roads, bridges, railways etc.
	502.2	General civil engineering work
	502.3	Earth-moving (navying)
	502.4	Construction of bridges, tunnels and shafts, drilling
	502.5	Hydraulic engineering
	502.6	Road-building (including specialised construction of airports and runways)
	502.7	Specialized construction work relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc) Specialised activities in other areas of civil engineering.
503	503.1	Installation (fittings and fixtures)
	503.2	General installation work
	503.3	Gas fitting and plumbing, and the installation of sanitary equipment
	503.4	Installation of heating and ventilating apparatus (central heating, air conditioning, ventilation)
	503.5	Sound and heat insulation, insulation against vibration
	503.6	Electrical fittings
		Installation of aerials, lightning conductors, telephones, etc.
504	504.1	Building completion work
	504.2	General building completion work
	504.3	Plastering
	504.4	Joinery, primarily engaged in the after assembly and/or installation (including the laying of parquet

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- 504.5 flooring)  
Painting, glazing, paper hanging  
Tiling and otherwise covering  
504.6 floors and walls.  
Other building completion work  
(putting in fireplaces, etc.)

### SCHEDULE 4

Regulation 2(2)

### CATEGORIES OF SERVICES

#### PART A

<i>Category</i>	<i>Services</i>	<i>Central Product classification of the United Nations Reference ("CPC")</i>
1.	Maintenance and repair of vehicles and equipment	6112,6122, 633, 886
2.	Transport by land, including armoured car services and courier services but not including transport of mail	712 (except 71235), 7512, 87304
3.	Transport by air but not transport of mail	73 (except 7321)
4.	Transport of mail by land	71235 (except 7321)
5.	Telecommunications services other than voice telephony, telex, radiotelephony paging and satellite services	752
6.	Financial services (a) Insurance services (b) Banking and investment services other than contracts for the issue, sale, purchase or transfer of securities or other financial instruments, and central bank services	81 (Part) 812, 814

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7.	Computer and related services	84
8.	R & D services where the benefits accrue exclusively to the utility for its use in the conduct of its own affairs and the services are to be wholly paid for by the utility	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 82201 to 82206
15.	Publishing and printing services on a fee or contract basis	88442
16.	Sewerage and refuse disposal services: sanitation and similar services	94

### PART B

*Category*                      *Services*                      *CPC Reference*

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17.	Hotel and restaurant services	64
18.	Supporting and auxiliary transport services	74
19.	Legal services	861
20.	Personnel placement and supply services	872
21.	Investigation and security services other than armoured car services	873 (except 87304)
22.	Education and vocational education services	92
23.	Health and social services	93
24.	Recreational, cultural and sporting services	96
25.	Other services	

**SCHEDULE 5**

Regulations 14(1), 15(2)(b),  
18(12), 23(1) and 31(2) and (10)

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

**PART A**

**PERIODIC INDICATIVE NOTICE**

**A. For supply contracts**

1. The name address, telegraphic address, telephone, telex and facsimile numbers of the utility and of the service from which additional information may be obtained.
2. For each type of goods or services, the total quantity or value to be supplied under the contract(s).
3.
  - (a) Estimated date of the commencement of the procedures leading to the award of the contract(s) (if known); and
  - (b) type of award procedure to be used.
4. Other information, (for example, indicate if a call for competition will be published later).
5. Date of despatch of the notice.

**B. For works contracts**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the utility.
2.
  - (a) The site;
  - (b) the nature and extent of the services to be provided, the main characteristics of the work or where relevant of any lots by reference to the work;



- (c) an estimate of the cost of the service to be provided;
- 3.
  - (a) type of award procedure to be used;
  - (b) estimated date for initiating the award procedures in respect of the contract or contracts;
  - (c) estimated date for the start of the work; and
  - (d) estimated time-table for completion of the work.
- 4. Terms of financing of the work and of price revision.
- 5. Other information (for example, indicate if a call for competition will be published later).
- 6. Date for despatch of the notice.

**C. For services contracts**

- 1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the utility and of the service from which additional information may be obtained.
- 2. Intended total procurement in each of the service categories listed in Part A of Schedule 5.
- 3.
  - (a) Estimated date of the commencement of the procedures of the award of the contract(s) (if known); and
  - (b) type of award procedure to be used.
- 4. Other information (for example, indicate if a call for competition will be published later).
- 5. Date of dispatch of the notice.

**PART B**

**OPEN PROCEDURES NOTICE**

- 1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the utility.
- 2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement).

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Category of services within the meaning of Schedule 5 and description (CPC classification).

3. Place for delivery, site or place of performance of services.
4. For supplies and works –
  - (a) nature and quantity of the goods to be supplied: or the nature and extent of the services to be provided and general nature of the work,
  - (b) indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and possibility of tendering for one, for several or for all of the lots; and
  - (c) for works contracts; information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services –
  - (a) indication whether the execution of the services is by law, regulation, or administrative provision reserved to a particular profession;
  - (b) reference of 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 execution of the services; and
  - (d) indication whether services providers can tender for a part of the services concerned.
6. Authorisation to submit variants.
7. Derogation from the use of European specifications, in accordance with regulation 12(4).
8. Time limits for delivery, completion or, in the case of a services contract, duration.
9.
  - (a) Name and address from which the contracts documents and additional documents may be requested;

- (b) where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.
- 10.
- (a) The final date for receipt of tenders;
- (b) The address to which they must be sent; and
- (c) The language or languages in which they must be drawn up.
- 11.
- (a) Where applicable, the persons authorised to be present at the opening of tenders; and
- (b) The date, hour and place of such opening.
12. Any deposits and guarantees required.
13. Main terms concerning financing and payment and/or reference to the provisions in which these are contained.
14. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
15. Minimum standards of the economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. The criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
18. Other information.
19. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
20. Date of despatch of the notice.

**PART C**

**RESTRICTED PROCEDURES NOTICE**

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

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

Category of services specified in Schedule 5 and description (CPC classification).

3. Place of delivery, site or place of performance of services.

4. For supplies and works –

- (a) nature and quantity of the goods to be supplied; or the nature and extent of the services to be provided and general nature of the work;
- (b) indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots; and
- (c) for works contracts; information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.

5. For services –

- (a) indication whether the execution of the services is by law, regulation, or administrative provision reserved to a particular profession;
- (b) reference of 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 execution of the services; and
- (d) indication whether services providers can tender for a part of the services concerned.

6. Authorisation to submit variants.

7. Derogation from the use of European specifications, in accordance with regulation 12(4).

8. Time limits for delivery, completion or, in the case of a services contract, duration.

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9. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
10.
  - (a) The final date for receipt of requests to participate;
  - (b) The address to which they must be sent; and
  - (c) The language or languages in which they must be drawn up.
11. The final date for despatch of invitations to tender.
12. Any deposits and guarantees required.
13. Main terms concerning financing and payment and/or reference to the provisions in which these are contained.
14. Information concerning the provider's personal position and minimum standards of economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
15. The criteria for the award of the contract where they are not mentioned in the invitation to tender.
16. Other information.
17. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
18. Date of despatch of the notice.

### **PART D**

#### **NEGOTIATED PROCEDURES NOTICE**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the utility.
2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement).  
  
Category of services specified in Schedule 5 and description (CPC reference).
3. Place of delivery, site or place of performance of services.
4. For supplies and works –

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- (a) nature and quantity of the goods to be supplied; or the nature and extent of the services to be provided and general nature of the work;
  - (b) indication of whether the suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots; and
  - (c) for works contracts; information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
5. For services –
  - (a) indication whether the execution of the services is by law, regulation, or administrative provision reserved to a particular profession;
  - (b) reference of 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 execution of the services; and
  - (d) indication whether services providers can tender or a part of the services concerned.
6. Derogation from the use of European specifications, in accordance with regulation 12(4).
7. Time limits for delivery, completion or duration of services contract.
8. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
9.
  - (a) The final date for receipt of requests to participate;
  - (b) the address to which they must be sent; and
  - (c) the language or languages in which they must be drawn up.
10. Any deposits and guarantees required.

11. Main terms concerning financing and payment and /or reference to the provisions in which these are contained.
12. Information concerning the provider's personal position and minimum standard of economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
13. Where applicable, the names and addresses of providers already selected by the utility.
14. Where applicable, date(s) of previous publications in the Official Journal.
15. Other information.
16. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
17. Date of despatch of the notice.

**PART E**

**NOTICE OF THE EXISTENCE OF A QUALIFICATION SYSTEM**

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

**PART F**

**CONTRACT AWARD NOTICE**

**I. Information for publication in the Official Journal**

1. Name and address of utility.
2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement).
3. At least a summary indication of the nature of the goods, works or services provided.

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4.
  - (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic indicative notice; contract notice);
  - (b) date of publication of the notice in the Official Journal; and
  - (c) in the case of contracts awarded without a prior call for competition, indication of whether it was regulation 5(2) or 16(1) which was relied upon and in the case of the latter, which was the relevant sub-paragraph.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases under regulation 16(1)(j).
9. Name and address of successful provider(s).
10. State, where applicable, whether the contract has been, or may be, sub-contracted.
11. Optional information—
  - value and share of the contract which may be sub-contracted to third parties;
  - award criteria;
  - price paid (or range of prices).

#### **II. Information not intended for publication**

12. Number of contracts awarded (where an award has been split between more than one provider).
13. Value of each contract awarded.
14. Country of origin of the product or services (EEC origin or non-EEC origin; if the latter, broken down by third country).
15. Was recourse made to the exceptions to the use of European specifications provided for under regulation 12(4)? If so, which?



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

17. Was the contract awarded to a bidder who submitted a variant, in accordance with regulation 21(4)?

18. Were any tenders excluded on the grounds that they were abnormally low, in accordance with regulation 21(6) and (7)?

19. Date of despatch of the notice.

20. In the case of contracts for services specified in Part B of Schedule 5, whether or not the utility agrees to publication of the notice.

**PART G**

**DESIGN CONTEST NOTICE**

1. Name, address, telegraphic address, telephone, telex and facsimile numbers of the utility and of the service from which additional information may be obtained.
2. Project description.
3. Nature of 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;
  - (b) where applicable, names of the participants already selected;
  - (c) criteria for the selection of participants; and
  - (d) the 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.

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9. Indication of whether the decision of the jury is binding on the utility.
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 H

#### DESIGN CONTEST RESULT NOTICE

1. Name, address and telegraphic address, telephone, telex and facsimile numbers of the utility.
2. Project description.
3. Number of participants.
4. Number of participants established outside the United Kingdom.
5. Winner(s) of the contest.
6. Where applicable, the prize(s) awarded.
7. Other information.
8. Reference to publication of the design contest notice in the Official Journal.
9. Date of despatch of the notice.