

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

**PROCUREMENT (PUBLIC CONTRACTS)
REGULATIONS 2012**

Repealed by LN. 2016/084 as from 18.4.2016¹

(LN. 2012/089)

Commencement **21.6.2012**

Amending enactments	Relevant current provisions	Commencement date
LN. 2013/019	r. 8(3) & (5)	7.2.2013
2014/058	Sch. 5	2.5.2014

¹ Where a contracting authority has commenced a contract award procedure before the coming into operation of these Regulations, the Regulations specified in regulation 105 (the revoked Regulations) must continue to have effect on and after the coming into operation of these Regulations in relation to that contract award procedure, as if the revoked Regulations had not been revoked in accordance with regulation 105.

A contracting authority has commenced a contract award procedure as referred to in subregulation (1) where, before the coming into operation of these Regulations, in relation to that procedure—

- (a) that contracting authority has sent a contract notice to the Official Journal in order to invite tenders, requests to be selected to tender for or to negotiate in respect of a proposed public contract;
- (b) in any case where there is no requirement to send a contract notice to the Official Journal in accordance with these Regulations, that contracting authority has despatched any form of advertisement seeking offers or expressions of interest in a proposed public contract;
- (c) where there is no advertising as referred to in paragraph (a) or (b), that contracting authority has contacted any economic operator in order to seek expressions of interest or offers in respect of a proposed public contract; or
- (d) that contracting authority has sent a notice to the Official Journal in accordance with the revoked Regulations in order to hold a design contest.

Where a framework agreement has been concluded before the coming into operation of these Regulations, these Regulations must not apply to the award of any specific contract under that framework agreement.

EU Legislation/International Agreements involved:

Directive 89/665/EEC
Directive 92/13/EEC
Directive 2004/17/EC
Directive 2004/18/EC
Directive 2007/66/EC
Regulation (EC) No 2195/2002
Regulation (EC) No 1564/2005
Regulation (EU) No 842/2011

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In exercise of the powers conferred on him by section 75 of the Public Finance (Control and Audit) Act and section 23(g)(i) of the Interpretation and General Clauses Act, and of all other enabling powers, and for the purpose of transposing into the law of Gibraltar Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts, and Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, the Minister has made the following Regulations—

PART 1
PRELIMINARY AND GENERAL

Title and commencement.

1. These Regulations may be cited as the Procurement (Public Contracts) Regulations 2012 and come into operation on the day of publication.

Interpretation.

2.(1) In these Regulations, unless the context otherwise requires—

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

“buyer profile” means a page on the internet set up by a contracting authority containing one or more of the following: prior information notices, information on ongoing invitations to tender, prospective and concluded contracts, cancelled procedures and useful general information, such as a contact point, a telephone number, facsimile number, a postal address and an e-mail address;

“candidate” means an economic operator who has sought an invitation to take part in a restricted or negotiated procedure or a competitive dialogue;

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

“central purchasing body” means a contracting authority which—

- (a) acquires goods or services intended for one or more contracting authorities;

- (b) awards public contracts intended for one or more contracting authorities; or
- (c) concludes framework agreements for work, works, goods or services intended for one or more contracting authorities;

“Commission” means the European Commission;

“Commission Regulation (EU) No 842/2011” means Commission Implementing Regulation (EU) No 842/2011 of 19 August 2011 establishing standard forms for the publication of notices in the field of public procurement and repealing Regulation (EC) No 1564/2005, as the same may be amended from time to time;

“Common Procurement Vocabulary” means the reference nomenclature applicable to public contracts as adopted by Regulation (EC) No 2195/2002 of 5 November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary, as amended from time to time;

“competitive dialogue procedure” means a procedure—

- (a) in which any economic operator may make a request to participate; and
- (b) whereby a contracting authority conducts a dialogue with the economic operators admitted to that procedure with the aim of developing one or more suitable alternative solutions capable of meeting its requirements, and on the basis of which the economic operators chosen by the contracting authority are invited to tender;

“concessionaire” means a person who has entered into a works concession contract with a contracting authority;

“contract documents” means the invitation to tender for or to negotiate the contract, the descriptive document (if any), the proposed conditions of contract, the specifications or descriptions of the goods, services, work or works required by the contracting authority and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto;

“contract notice” means, except in regulation 49, a notice sent to the Official Journal in accordance with these Regulations;

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

“contractor” means a person who offers on the market work or works and—

- (a) who sought, who seeks, or would have wished, to be the person to whom a public works contract is awarded; and
- (b) who is a national of a relevant State and is established in Gibraltar or in a relevant State;

“CPC” means Central Product Classification of the United Nations;

“CPV” means Common Procurement Vocabulary;

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

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

“disabled person” means any person recognised as disabled within the meaning of the Disabled Persons Act 1992;

“disability” has the same meaning as in the Disabled Persons Act 1992;

“dynamic purchasing system” means a completely electronic system of limited duration which is—

- (a) established by a contracting authority to purchase commonly used goods, work, works or services; and
- (b) open throughout its duration for the admission of economic operators which—
 - (i) satisfy the selection criteria specified by the contracting authority; and

- (ii) submit an indicative tender to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person;

“economic operator” has the meaning given to it by regulation 4;

“electronic auction” means a repetitive electronic process for the presentation of prices to be revised downwards or of new and improved values of quantifiable elements of tenders, including price, which—

- (a) takes place after the initial evaluation of tenders; and
- (b) enables tenders to be ranked using automatic evaluation methods,

as a result of which certain public services contracts and certain public works contracts having as their subject-matter intellectual performances, such as the design of works, may not be the object of electronic auctions;

“electronic means” means using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, by radio, by optical means or by other electromagnetic means;

“established”, unless the context otherwise requires, has the same meaning as in the TFEU;

“European standard” has the meaning given to it in regulation 9(1);

“financial year” means, except where the context otherwise requires, the period of 12 months ending on 31 March in any year or, in relation to any person whose accounts are prepared in respect of a different 12 month period, that period of 12 months;

“framework agreement” means an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity envisaged) under which the economic operator will enter into one or more contracts with a contracting authority 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 public supply contract and any ship, aircraft or vehicle;

“indicative tender” means a tender prepared by an economic operator seeking admission to a dynamic purchasing system which sets out the terms on which it would be prepared to enter into a contract with a contracting authority should that contracting authority propose to award a contract under the system;

“international standard” has the meaning given to it in regulation 9(1);

“Minister”, subject to regulation 43, means the Minister responsible for finance;

“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 Gibraltar or of a relevant State and which has its registered office, central administration or principal place of business in Gibraltar or in a relevant State;

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

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

“open procedure” means a procedure leading to the award of a contract whereby any interested economic operator may tender for the contract;

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 11;

“public contract” means a public services contract, a public supply contract or a public works contract;

“Public Sector Directive” means Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public services contracts, as the same may be amended from time to time;

“public services contract” means a contract, in writing, for consideration (whatever the nature of the consideration) under which a

contracting authority engages a person to provide services but does not include—

- (a) a public works contract; or
- (b) a public supply contract;

but a contract for both goods and services shall be considered to be a public services contract if the value of the consideration attributable to those services exceeds that of the goods covered by the contract and a contract for services which includes activities specified in Schedule 1 that are only incidental to the principal object of the contract shall be considered to be a public services contract;

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

- (a) for the purchase of goods by a contracting authority (whether or not the consideration is given in instalments and whether or not the purchase is conditional upon the occurrence of a particular event); or
- (b) for the hire of goods by a contracting authority (both where the contracting authority becomes the owner of the goods after the end of the period of hire and where it does not),

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

“public telecommunications services” means telecommunications services the provision of which a relevant State has specifically assigned, in particular, to one or more telecommunications entities;

“public works contract” means a contract for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities—

- (a) for the carrying out, or both the design and carrying out, of a work or works for a contracting authority; or

- (b) under which a contracting authority engages a person to procure by any means the carrying out, or both the design and carrying out, for the contracting authority of a work corresponding to the requirements specified by the contracting authority;

“relevant State” means a Member State or a State listed in Schedule 3;

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

“services concession contract” means a public services contract under which the consideration given by the contracting authority consists of or includes the right to exploit the service or services to be provided under the contract;

“services provider” means a person who offers on the market services and—

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

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

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

“supplier” means a person who offers on the market goods for purchase or hire and—

- (a) who sought, who seeks, or who would have wished, to be the person to whom a public supply contract is awarded; and
- (b) who is a national of a relevant State and is established in Gibraltar or in a relevant State;

“telecommunications services” means services the provision of which consists wholly or partly in the transmission and routing of signals on the public telecommunications network by means of telecommunications processes, with the exception of broadcasting and television;

“TFEU” means the Treaty on the Functioning of the European Union;

“tenderer” means an economic operator who has submitted a tender;

“Utilities Directive” means Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, as the same may be amended from time to time;

“work” means the outcome of any works which is sufficient of itself to fulfil 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 or a public holiday within the meaning of section 58 of the Interpretation and General Clauses Act;

“works” means any of the activities specified in Schedule 1;

“works concession contract” means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract;

“written” or “in writing” means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and it may include information transmitted and stored by electronic means;

“year” means a calendar year.

(2) Subject to subregulation (3), in these Regulations—

- (a) “a Part A services contract” is a contract under which services specified in Part A of Schedule 2 are to be provided;
- (b) “a Part B services contract” is a contract under which services specified in Part B of Schedule 2 are to be provided.

(3) Where services specified in both Parts A and B of Schedule 2 are to be provided under a single contract, then the contract shall be treated as a—

- (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
- (b) 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.

(4) Except in Part 9, where a thing is required to be done under these Regulations—

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

(5) In the event of varying interpretations of the scope of these Regulations, owing to possible differences between the CPV and the Nomenclature of Economic Activities in the European Community (“NACE”) listed in Schedule 1, or between the CPV and the Central product Classification (“CPC”) (provisional version) nomenclatures listed in Schedule 2, the NACE or the CPC nomenclature respectively shall take precedence.

Contracting authorities.

3.(1) For the purposes of these Regulations each of the following is a contracting authority—

- (a) a Government Department;
- (b) the Gibraltar Parliament;
- (c) a body governed by public law as defined in Article 1(9) of the Public Sector Directive which is set out in Part 1 of Schedule 6 and any other body in Gibraltar which the Government may from time to time specify by notice in the Gazette; and

- (d) a corporation established, or a group of individuals appointed to act together, for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character, and–
 - (i) financed wholly or mainly by another contracting authority,
 - (ii) subject to management supervision by another contracting authority, or
 - (iii) more than half of the board of directors or members of which, or, in the case of a group of individuals, more than half of those individuals, are appointed by another contracting authority.

(2) Where an entity specified in subregulation (1) does not have the capacity to enter into a contract, the contracting authority in relation to that entity is a person whose function it is to enter into contracts for that entity.

Economic operators.

4.(1) In these Regulations, an “economic operator” means a contractor, a supplier or a services provider.

(2) When these Regulations apply, a contracting authority shall not treat a person who is not a national of a relevant State and established in Gibraltar or in a relevant State more favourably than one who is.

(3) A contracting authority shall–

- (a) treat economic operators equally and in a non-discriminatory way; and
- (b) act in a transparent way.

Application of these Regulations.

5.(1) Subject to subregulations (2) and (4), these Regulations apply whenever a contracting authority seeks offers in relation to a proposed public supply contract, public works contract, Part A services contract, framework agreement or dynamic purchasing system other than a contract, framework agreement or dynamic purchasing system excluded from the application of these Regulations by regulation 6 or 8.

(2) Subregulation (1) does not apply whenever a contracting authority seeks offers in relation to a proposed framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded.

(3) Whenever a contracting authority seeks offers in relation to a proposed Part B services contract or a framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded other than one excluded by virtue of regulation 6 or 8–

- (a) Parts 1, 9 and 10 apply; and
- (b) the following provisions in Parts 2 to 8 apply–
 - (i) regulation 9 (technical specifications in the contract documents);
 - (ii) regulation 32 (contract award notice);
 - (iii) regulation 42(2) (statistical and other reports);
 - (iv) regulation 43 (provision of reports); and
 - (v) regulation 44 (publication of notices).

(4) In these Regulations, a reference to a public works contract shall not include a works concession contract except in–

- (a) Parts 1, 9 and 10; and
- (b) the following provisions in Parts 6, 7 and 8–
 - (i) regulation 36 (subsidised public works contracts and public services contracts);
 - (ii) regulation 38 (works concession contracts);
 - (iii) regulation 39 (sub-contracting the work or works to be carried out under a works concession contract);
 - (iv) regulation 41 (conditions for performance of contracts);
 - (v) regulation 43 (provision of reports);
 - (vi) regulation 44 (publication of notices);

- (vii) regulation 45 (confidentiality of information);
- (viii) regulation 46 (means of communication);
- (ix) regulation 47 (sub-contracting); and
- (x) regulation 48 (public service bodies).

General exclusions.

6.(1) These Regulations shall not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchase system where the contracting authority is a utility within the meaning of regulation 3 of the Procurement (Utilities Contracts) Regulations 2012 and—

- (a) that contract is for the purposes of carrying out an activity specified in any Part of Schedule 1 to those Regulations in which the utility is specified;
- (b) that contract is for the provision of bus services to the public where other entities are free to provide those services, either in general or in a particular geographical area, under the same conditions as the utility;
- (c) that contract is for the purpose of acquiring goods, work, 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, work, works or services and other persons are not free to sell, hire or provide them under the same conditions;
- (d) that contract is for the purchase of water, where that utility is engaged in the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transportation or distribution of drinking water or the supply of drinking water to such networks;
- (e) that contract is for the supply of energy or of fuels for the production or energy, where that utility is engaged in—
 - (i) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of gas or heat or the supply of gas or heat to such networks; or

- (ii) the provision or operation of fixed networks intended to provide a service to the public in connection with the production, transport or distribution of electricity or the supply of electricity to such networks; or
- (iii) exploring for or extracting oil, gas, coal or other solid fuels; or
- (f) where that utility is engaged in an activity excluded from the Procurement (Utilities Contract) Regulations 2012 by virtue of regulation 9 of those Regulations.

(2) These Regulations do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system—

- (a) where the principal purpose of the contract is to permit the contracting authority to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services;
- (b) which is classified as secret or where the performance of the contract must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of Gibraltar or when the protection of the essential interests of the security of Gibraltar require it;
- (c) where Article 346 of the TFEU applies to that public contract, framework agreement or dynamic purchasing system;
- (d) where different procedures govern the procedures leading to the award of the contract and it is to be entered into in accordance with—
 - (i) an international agreement concluded in conformity with the TFEU applicable to Gibraltar with a State which is not a relevant State and it relates to goods or the carrying out of a work or works or the provision of services intended for the joint implementation or exploitation of a project related to that agreement; or
 - (ii) an international agreement relating to the stationing of troops ; or

- (iii) the contract award procedures of an organisation of which only States are members (an “international organisation”);
- (e) for the acquisition of land, including existing buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- (f) for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters or for the purchase of broadcasting time;
- (g) for arbitration or conciliation services;
- (h) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments in particular transactions by the contracting authorities to raise money or capital;
- (i) for central bank services;
- (j) for employment and other contracts of service;
- (k) for research and development services unless—
 - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs; and
 - (ii) the services are to be wholly paid for by the contracting authority;
- (l) under which services are to be provided by a contracting authority, or by a person which is a contracting authority in a relevant State for the purposes of the Public Sector Directive, because that contracting authority or person has an exclusive right—
 - (i) to provide the services, or
 - (ii) which is necessary for the provision of the services,in accordance with any published law, regulation or administrative provision, which is compatible with the TFEU;

- (m) which is a services concession contract awarded by a contracting authority, subject to the application of regulation 48; or
- (n) where—
 - (i) the Procurement (Defence and Security Public Contracts) Regulations 2012 apply, or
 - (ii) the application of those Regulations is excluded by regulation 8 (thresholds) or 6 (general exclusions) of those Regulations.

Reserved contracts.

7.(1) In this regulation—

“supported business” means a service where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and “supported businesses” shall be interpreted accordingly;

“supported employment programme” means a scheme under which work is provided for disabled persons and where more than 50% of the workers so supported are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and “supported employment programmes” shall be interpreted accordingly; and

“supported factory” means an establishment where more than 50% of the workers are disabled persons who by reason of the nature or severity of their disability are unable to take up work in the open labour market and “supported factories” shall be interpreted accordingly.

(2) A contracting authority may reserve the right to participate in a public contract award procedure, framework agreement or dynamic purchasing system to economic operators which operate supported factories, supported businesses or supported employment programmes.

(3) Where a contracting authority has reserved the right to participate in a public contract, framework agreement or dynamic purchasing system in accordance with subregulation (2), it shall follow the contract award procedures set out in these Regulations.

(4) When seeking offers in relation to a public contract, a framework agreement or dynamic purchasing system, a contracting authority shall specify in the contract notice if it is using the approach referred to in subregulation (2).

Thresholds.

8.(1) These Regulations do not apply to the seeking of offers in relation to a proposed public contract, framework agreement or dynamic purchasing system where the estimated value of the contract, framework agreement or dynamic purchasing system at the relevant time is less than the relevant threshold.

(2) For the purposes of subregulation (1), the relevant threshold is the sum mentioned in Article 7(c) of the Public Sector Directive in the case of a public works contract and a public works contract subsidised as referred to in regulation 36.

(3) For the purposes of subregulation (1), the relevant threshold in the case of a public services contract is the sum mentioned in Article 7(b) of the Public Sector Directive.

(4) For the purposes of subregulation (1), the relevant threshold is the sum mentioned in Article 7(b) of the Public Sector Directive in the case of a public services contract which is—

- (a) subsidised as referred to in regulation 36;
- (b) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 642280000-0, 64228100-1, 64228200-2 within category 5 of Part A of Schedule 2;
- (c) for research and development services specified in category 8 of Part A of Schedule 2; or
- (d) a Part B services contract to which regulation 36 does not apply.

(5) For the purposes of subregulation (1), the relevant threshold in the case of a public supply contract is the sum mentioned in Article 7(b) of the Public Sector Directive.

(6) The value in pounds sterling of any amount expressed in these Regulations in euro shall be calculated by reference to the rate for the time being applying for the purposes of the Public Sector Directive as published from time to time in the Official Journal.

(7) For the purposes of subregulation (1), the estimated value of a public contract shall be the value of the total consideration payable, (calculated in accordance with this regulation), which the contracting authority expects to be payable under the contract.

(8) In determining the value of the total consideration which the contracting authority expects to be payable under a public contract it shall, where appropriate, take account of—

- (a) any form of option;
- (b) any renewal of the contract;
- (c) any prize or payment awarded by the contracting authority to the economic operator;
- (d) the premium payable and other forms of remuneration for insurance services;
- (e) fees, commissions, interest or other forms of remuneration payable for banking and other financial services; and
- (f) fees, commissions or other forms of remuneration payable for design services.

(9) For the purposes of subregulation (1), the estimated value of a public supply contract for the hire of goods is—

- (a) the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 12 months or less;
- (b) the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for more than 12 months; or
- (c) the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into.

(10) For the purposes of subregulation (1), the estimated value of a public services contract which does not indicate a total price shall be—

- (a) the aggregate of the value of the consideration which the contracting authority expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or
- (b) the value of the consideration which the contracting authority expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period.

(11) Subject to subregulations (12) and (15), where a contracting authority has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of subregulation (1) of each of those contracts shall be the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.

(12) Subregulation (11) shall not apply to any contract (unless the contracting authority chooses to apply that subregulation to a contract) if the contract has an estimated value of less than—

- (a) 80,000 euro for a public services contract or a public supply contract; or
- (b) 1,000,000 euro for a public works contract,

and the aggregate value of that contract and any other such contract is less than 20% of the aggregate value of the consideration which the contracting authority has given or expects to be payable under all the contracts entered into or to be entered into to fulfil the single requirement for goods, services or for the carrying out of work or works.

(13) Subject to subregulation (15), where a contracting authority has a requirement over a period for goods or services and for that purpose enters into—

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

the estimated value for the purposes of subregulation (1) of the contract shall be the amount calculated under subregulation (14).

(14) The contracting authority shall calculate the amount referred to in subregulation (13) either—

- (a) by taking the aggregate of the actual value of the consideration paid under the contracts which-
 - (i) have similar characteristics; and
 - (ii) are for the same type of goods or services,

during the last financial year of the contracting authority 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 or 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 contracting authority expects to be payable under contracts which have similar characteristics, and which are for the same type of goods or services during-
 - (i) in the case of public supply contracts, the period of 12 months from the first date of the delivery of the goods to be purchased or hired, or in the case of public services contracts, from the first date on which the services will be performed; or
 - (ii) the financial year if that is longer than 12 months.

(15) Notwithstanding subregulations (11) and (13), in relation to a public supply contract or a public services contract, when the goods or services are required for the sole purposes of a discrete operational unit within the organisation of a contracting authority and—

- (a) the decision whether to procure those goods or services has been devolved to such a unit; and
- (b) that decision is taken independently of any other part of the contracting authority,

the valuation methods described in subregulations (11) and (14) shall be adapted by aggregating only the value of the consideration which was payable or the contracting authority expects to be payable, as the case may be, under a public supply contract or a public services contract which was or is required for the sole purpose of that unit.

(16) Where a contracting authority intends to provide any goods to the economic operator awarded a public works contract for the purpose of

carrying out that contract, the value of the consideration of the public works contract for the purposes of subregulations (7) and (11) shall be taken to include the estimated value at the relevant time of those goods.

(17) The relevant threshold for the purposes of subregulation (1) for a framework agreement or a dynamic purchasing system is the threshold for—

- (a) a public works contract, where the framework agreement or dynamic purchasing system relates to the carrying out of work or works;
- (b) a public services contract, where the framework agreement or dynamic purchasing system relates to the provision of services; or
- (c) a public supply contract, where the framework agreement or dynamic purchasing system relates to the purchase or hire of goods.

(18) The estimated value of a framework agreement or dynamic purchasing system is the aggregate of the values estimated in accordance with this regulation of all the contracts which could be entered into under the framework agreement or dynamic purchasing system.

(19) A contracting authority shall not enter into separate contracts or exercise a choice under a valuation method with the intention of avoiding the application of these Regulations to those contracts.

(20) The relevant time for the purposes of subregulations (1), (14) and (16) means the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these Regulations.

PART 2 TECHNICAL SPECIFICATIONS

Technical specifications in the contract documents.

9.(1) In this Part—

“British standard” means a standard adopted by a British standards organisation and made available to the general public;

“common technical specification” means a technical specification drawn up in accordance with a procedure recognised by the Member

States with a view to uniform application in all Member States and which has been published in the Official Journal;

“European standard” means a standard adopted by a European standards organisation and made available to the general public;

“European technical approval” means an approval of the fitness for use of a product, issued by an approval body designated for the purpose by a Member State, following a technical assessment of whether the product fulfils the essential requirements for building works, having regard to the inherent characteristics of the product and the defined conditions of application and use;

“international standard” means a standard adopted by an international standards organisation and made available to the general public;

“recognised bodies” means test and calibration laboratories and certification and inspection bodies which comply with applicable European standards and “recognised body” shall be interpreted accordingly;

“standard” means a technical specification approved by a recognised standardisation body for repeated and continuous application, compliance with which is not compulsory and which is an international standard, a European Standard or British standard;

“technical reference” means any product produced by European standardisation bodies, other than official standards, according to procedures adopted for the development of market needs; and

“technical specifications” means–

- (a) in the case of a public services contract or a public supply contract, a specification in a document defining the required characteristics of materials, goods or services, such as quality levels, environmental performance levels, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, use of a product, safety or dimensions, including requirements relevant to the product as regards the name under which the product is sold, terminology, symbols, testing and test methods, packaging, marking and labelling, user instructions, production processes and methods and conformity assessment procedures; and
- (b) in the case of a public works contract, the totality of the technical prescriptions contained, in particular, in the contract

documents, defining the characteristics required of a material, products or goods which permits a material, products or goods to be described in a manner such that it fulfils the use for which it is intended by the contracting authority and these characteristics shall include—

- (i) levels of environmental performance, design for all requirements (including accessibility for disabled persons) and conformity assessment, performance, safety or dimensions, including the procedures concerning quality assurance, terminology, symbols, testing and test methods, packaging, marking and labelling, and production processes and methods;
- (ii) rules relating to design and costing, the test, inspection and acceptance conditions for work or works and methods or techniques of construction; and
- (iii) all other technical conditions which the contracting authority is in a position to prescribe, under general or specific regulations, in relation to the finished work or works and to the materials or parts which they involve.

(2) Where a contracting authority wishes to lay down technical specifications which must be met by—

- (a) the services to be provided under a public services contract and the materials and goods used in or for it;
- (b) the goods to be purchased or hired under a public supply contract; or
- (c) the work or works to be carried out under a public works contract and the materials and goods used in or for it,

it shall specify those technical specifications in the contract documents.

(3) When laying down technical specifications in accordance with subregulation (2), a contracting authority shall, wherever possible, take into account accessibility criteria for disabled persons or the suitability of the design for all users.

(4) A contracting authority shall ensure that technical specifications afford equal access to economic operators and do not have the effect of creating unjustified obstacles to the opening up of public procurement to competition.

(5) Subject to technical requirements which are mandatory in Gibraltar and to the extent that those requirements are compatible with EU obligations, a contracting authority shall define the technical specifications required for a contract in accordance with subregulation (6), (7), (8) or (9).

(6) A contracting authority may define the technical specifications referred to in subregulation (5)–

(a) by reference to technical specifications defined in subregulation (1) in the following order of preference–

- (i) British standards transposing European standards;
- (ii) European technical approvals;
- (iii) common technical specifications;
- (iv) international standards; or
- (v) other technical reference systems established by the European standardisation bodies; or

(b) in the absence of technical specifications referred to in paragraph (a) by reference to the following technical specifications–

- (i) British standards;
- (ii) British technical approvals; or
- (iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the products;

and each reference to a technical specification made in accordance with this subregulation shall be accompanied by the words “or equivalent”.

(7) A contracting authority may define the technical specifications referred to in subregulation (5) in terms of performance or functional requirements (which may include environmental characteristics) provided that the requirements are sufficiently precise to allow an economic operator to determine the subject of the contract and a contracting authority to award the contract.

(8) A contracting authority may define the technical specifications referred to in subregulation (5) by defining performance and functional requirements as referred to in subregulation (7) with reference to the technical specifications referred to in subregulation (6) as a means of presuming conformity with such performance or functional requirements.

(9) A contracting authority may define the technical specifications referred to in subregulation (6) for certain characteristics and by reference to performance or functional requirements referred to in subregulation (7) for other characteristics.

(10) Where a contracting authority defines technical specifications as referred to in subregulation (6), it shall not reject an offer on the basis that the materials, goods or services offered do not comply with those technical specifications if an economic operator proves to the satisfaction of the contracting authority by any appropriate means that the one or more solutions that economic operator proposes in its tender satisfy the requirements of those technical specifications in an equivalent manner.

(11) Where a contracting authority defines technical specifications in terms of performance or functional requirements as referred to in subregulation (7), it shall not reject an offer for materials, goods, services, work or works which complies with—

- (a) a British standard transposing a European standard;
- (b) a European technical approval;
- (c) a common technical specification;
- (d) an international standard; or
- (e) a technical reference system established by a European standardisation body,

if those technical specifications address the performance or functional requirements referred to by the contracting authority and the economic operator proves in its tender to the satisfaction of the contracting authority by any appropriate means that the work, works, materials, goods or services meet the performance or functional requirements of the contracting authority.

(12) Where a contracting authority lays down environmental characteristics in terms of performance or functional requirements as referred to in subregulation (7), it may use the detailed technical

specifications, or if necessary, parts thereof, as defined by European or multi-national eco-labels or by any other eco-label, if–

- (a) those technical specifications are appropriate to define the characteristics of the materials, goods or services that are the object of the contract;
- (b) the eco-label requirements are drawn up on the basis of scientific information;
- (c) the eco-label is adopted using a procedure in which all stakeholders, such as government bodies, consumers, manufacturers, distributors and environmental organisations, are able to participate; and
- (d) the technical specifications are accessible to any party interested.

(13) A contracting authority may indicate in the contract documents that the materials, goods or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents and shall accept any other appropriate means of proof that the materials, goods or services comply with those technical specifications.

(14) The term “appropriate means” referred to in subregulations (10), (11) and (13) includes a technical dossier of a manufacturer or a test report from a recognised body.

(15) A contracting authority shall accept certificates from recognised bodies established in a Member State when considering whether a tender for a contract conforms to the technical specifications laid down by the contracting authority in accordance with subregulation (2).

(16) Subject to subregulation (17), a contracting authority shall not lay down technical specifications in the contract documents which refer to–

- (a) materials or goods of a specific make or source or to a particular process; or
- (b) trademarks, patents, types, origin or means of production,

which have the effect of favouring or eliminating particular economic operators.

(17) Notwithstanding subregulation (16), exceptionally, a contracting authority may incorporate the references referred to in subregulation (16)

into the technical specifications in the contract documents, provided that the references are accompanied by the words “or equivalent”, where–

- (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 economic operators.

Variants.

10.(1) Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous in accordance with regulation 31(1)(a), it shall indicate in the contract notice whether or not it authorises economic operators to submit offers which contain variations on the requirements specified in the contract documents and a contracting authority shall not accept an offer which contains a variation without that indication.

(2) Where a contracting authority authorises a variant in accordance with subregulation (1) it shall state in the contract documents the minimum requirements to be met by the variants and any specific requirements for the presentation of an offer which contains variants.

(3) A contracting authority shall only consider variants which meet its minimum requirements as stated in the contract documents in accordance with subregulation (2).

(4) A contracting authority shall not reject an offer which contains variants on the requirements specified in the contract documents on the ground that–

- (a) where it intends to award a public services contract, the offer would lead to the award of a public supply contract; or
- (b) where it intends to award a public supply contract, the offer would lead to the award of a public services contract.

PART 3
PROCEDURES LEADING TO THE AWARD OF A PUBLIC
CONTRACT

Prior information notices.

11.(1) Subject to subregulations (4), (5) and (6), a contracting authority shall send a notice in the form of the prior information notice in Annex I to Commission Regulation (EU) No 842/2011 and containing the information therein specified to the Commission or publish it on that contracting authority's buyer profile as soon as possible after—

- (a) the beginning of the financial year in the case of public supply contracts or public services contracts or framework agreements for the purchase or hire of goods or for the provision of services; or
- (b) the decision authorising the programme of public works contracts or framework agreements for the carrying out of work or works, in the case of public works contracts or framework agreements for the carrying out of work or works.

(2) The notice referred to in subregulation (1) shall contain information in respect of—

- (a) the public supply contracts, the public services contracts or the framework agreements referred to in subregulation (1)(a) which the contracting authority expects to award or conclude during the period of 12 months beginning with the date of the notice; and
- (b) the public works contracts or the framework agreements referred to in subregulation (1)(b) which the contracting authority expects to award or conclude,

and that notice shall be sub-divided to give that information separately for each product area of goods by reference to the CPV nomenclature of each category of works or services as specified in Schedules 1 and 2.

(3) Where a contracting authority publishes a notice on its buyer profile in accordance with subregulation (1), it shall also send a notice in the form of a notice on a buyer profile in Annex VIII to Commission Regulation (EU) No 842/2011 informing the Commission by electronic means in accordance with the format and procedure for sending notices specified in paragraph 3 of Annex VIII to the Public Sector Directive of that publication.

(4) The obligation to publish a prior information notice in accordance with subregulation (1) shall apply only to proposed public contracts which are not excluded from the application of these Regulations by regulation 6 or 8 and where, at the date of despatch of the notice—

- (a) the total consideration which the contracting authority expects to be payable under—
 - (i) public supply contracts or framework agreements for the purchase or hire of goods falling within the same product area; or
 - (ii) Part A services contracts or framework agreements for the provision of services falling within the same category specified in Part A of Schedule 2,

is equal to or exceeds 750,000 euro; or

- (b) the total consideration which the contracting authority expects to be payable under public works contracts or framework agreements for the carrying out of work or works is equal to or exceeds the sum mentioned in Article 7(c) of the Public Sector Directive.

(5) The obligation to publish a prior information notice shall apply only where the contracting authority takes the option of shortening the time limits for the receipt of tenders in accordance with regulation 15(7) or 16(18).

(6) This regulation shall not apply to a proposed contract where the procedure for the award of the contract is the negotiated procedure without the prior publication of a contract notice in accordance with regulation 14.

Selection of contract award procedures.

12.(1) Subject to subregulation (2), for the purpose of seeking offers in relation to a proposed public contract, a contracting authority shall use—

- (a) the open procedure in accordance with regulation 15; or
- (b) the restricted procedure in accordance with regulation 16,

in all circumstances, except where it may use—

- (i) the negotiated procedure in accordance with regulation 17 in the circumstances referred to in regulations 13 and 14; or
- (ii) the competitive dialogue procedure in accordance with regulation 18.

(2) Subregulation (1) shall not apply in the case of a subsidised housing scheme public works contract which is subject to regulation 37.

Use of the negotiated procedure with prior publication of a contract notice.

13. A contracting authority may use the negotiated procedure with the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—

- (a) subject to regulation 14(1)(a)(i), in the event that the procedure leading to the award of a contract by the contracting authority using the open procedure, the restricted procedure or the competitive dialogue procedure was discontinued because of—
 - (i) irregular tenders; or
 - (ii) unacceptable tenders following an evaluation made in accordance with regulation 15(11), 16(7) or 18(10),

but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
- (b) exceptionally, when the nature of the work or works to be carried out, the goods to be purchased or hired or the services to be provided under the contract or the risks attaching to them are such as not to permit prior overall pricing;
- (c) in the case of a public services contract, when the nature of the services to be provided, in particular in the case of services specified in category 6 of Part A of Schedule 2 and intellectual services, such as services involving the design of work or works, is such that specifications cannot be established with sufficient precision to permit the award of the contract using the open procedure or the restricted procedure; or
- (d) in the case of a public works contract, when the work or works are to be carried out under the contract solely for the purpose of research, testing or development but not with the aim of ensuring profitability or to recover research and development costs.

Use of the negotiated procedure without prior publication of a contract notice.

14.(1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—

- (a) in the case of a public contract—
 - (i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract all of, and only, those economic operators which submitted a tender following an invitation made during the course of the discontinued open procedure, restricted procedure or competitive dialogue procedure (not being a tender which was excluded in accordance with regulation 15(11), 16(7) or 18(10));
 - (ii) subject to subregulation (2), in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;
 - (iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;
 - (iv) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in—
 - (aa) regulation 15 for the open procedure;
 - (bb) regulation 16 for the restricted procedure; or
 - (cc) regulation 17 for the negotiated procedure,cannot be met;
- (b) in the case of a public supply contract—
 - (i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of

research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;

- (ii) subject to subregulation (3), when the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the contracting authority to acquire goods having different technical characteristics which would result in—
 - (aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or
 - (bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;
- (iii) for the purchase or hire of goods quoted and purchased on a commodity market;
- (iv) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale or in a sale brought about because a supplier is subject to a procedure referred to in regulation 23(4)(a), (b) or (c);
- (c) in the case of a public services contract following a design contest, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, where all successful contestants are invited to negotiate the contract;
- (d) in the case of a public works contract or a public services contract—
 - (i) subject to subregulation (4), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with the contracting authority to carry out additional work or works or provide additional services which were not included in the project initially considered or in the

original public works contract or public services contract but which through unforeseen circumstances have become necessary, and such work, works or services—

- (aa) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the contracting authority; or
 - (bb) 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; and
- (ii) subject to subregulation (5), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with that contracting authority to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

(2) A contracting authority using the negotiated procedure in accordance with subregulation (1)(a)(ii) shall, if the Commission requests it, submit a report recording the fact that it has done so to the Minister for onward transmission to the Commission.

(3) A contracting authority shall not use the negotiated procedure in accordance with subregulation (1)(b)(ii) if the term of the proposed contract, or the term of that contract and of any other contract entered into for the same purpose, is more than three years, unless there are reasons why it is unavoidable that this period should be exceeded.

(4) A contracting authority shall not use the negotiated procedure in accordance with subregulation (1)(d)(i), where the aggregate value of the consideration to be given under contracts for the additional work, works or services exceeds 50% of the value of the consideration payable under the original contract.

(5) A contracting authority shall not use the negotiated procedure in accordance with subregulation (1)(d)(ii) unless—

- (a) the contract notice relating to the original contract stated that a public works contract or a public services contract for new

work, works or services which would be a repetition of the work or works carried out or the services provided under the original contract may be awarded using the negotiated procedure in accordance with subregulation (1)(d)(ii);

- (b) in determining the estimated value of the original contract for the purposes of regulation 8, the contracting authority took into account the value of the consideration which it expected to be payable for the new work, works or services; and
- (c) the procedure for the award of the new contract is commenced within 3 years of the original contract being entered into.

The open procedure.

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

(2) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal, as soon as possible after forming the intention, a notice, in the form of the contract notice in Annex II to Commission Regulation (EU) No 842/2011 inviting tenders and containing the information therein specified.

(3) Subject to subregulations (5), (6) and (7), the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the contract notice shall be specified in the contract notice and shall be not less than 52 days from the date of despatch of the notice.

(4) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders when fixing time limits for the receipt by it of tenders.

(5) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limits referred to in subregulations (3) and (7) may be reduced by 7 days.

(6) The contracting authority may reduce the time limits for the receipt by it of tenders by 5 days provided that—

- (a) the contracting authority offers unrestricted and full direct access by electronic means to the contract documents from the date of publication of the contract notice; and

- (b) the contract notice specifies the internet address at which the documents referred to in paragraph (a) are available.

(7) Where—

- (a) the contracting authority has published a prior information notice in accordance with regulation 11;
- (b) the prior information notice contained as much of the information referred to in the form of the contract notice in Annex II to Commission Regulation (EU) No 842/2011 as was available at the time of publication; and
- (c) the prior information notice was sent to the Official Journal at least 52 days and not more than 12 months before the date on which the contract notice provided for in subregulation (2) is despatched,

the contracting authority may substitute for the period of not less than 52 days specified in subregulation (3), a shorter period of generally not less than 36 days and in any event not less than 22 days.

(8) Where the contracting authority does not offer unrestricted and full direct access by electronic means to the contract documents in accordance with subregulation (6), the contracting authority shall send the contract documents to an economic operator within 6 days of the receipt of a request from that economic operator, where the documents are requested in good time before the date specified in the contract notice as the final date for the receipt by it of tenders.

(9) The contracting authority shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator, if the request is received in sufficient time to enable the contracting authority to supply the information not later than 6 days before the date specified in the contract notice as the final date for the receipt by it of tenders.

(10) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the contracting authority to respond in accordance with subregulations (8) and (9) and, for whatever

reason, the contract documents or further information are not supplied in accordance with those subregulations; or

- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(11) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude a tender from the evaluation of offers made in accordance with regulation 31 only if the economic operator—

- (a) may be treated as ineligible to tender on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
 - (i) economic and financial standing; or
 - (ii) technical or professional ability.

(12) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing; or
- (b) technical or professional ability,

if those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(13) The contracting authority may combine the reductions in the periods of time referred to in subregulations (5) and (6).

The restricted procedure.

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

(2) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal, as soon as possible after forming the intention, a notice, in the form of the contract notice in Annex II to Commission Regulation (EU) No 842/2011, inviting requests to be selected to tender and containing the information therein specified.

(3) Subject to subregulation (5), the date which the contracting authority fixes as the last date for the receipt by it of requests to be selected to tender shall be specified in the contract notice and shall be not less than 37 days from the date of the despatch of the notice.

(4) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract and the time required for drawing up tenders when fixing time limits for the receipt of requests to be selected to tender and for receipt by it of tenders.

(5) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limit referred to in subregulation (3) may be reduced by 7 days.

(6) Where compliance with the minimum time limit of 37 days referred to in subregulation (3) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit—

- (a) a time limit of not less than 15 days from the date of despatch of the contract notice; or
- (b) where the contracting authority has transmitted the contract notice by electronic means in accordance with subregulation (5), a time limit of not less than 10 days from the date of despatch of the contract notice.

(7) The contracting authority shall make its evaluation in accordance with regulations 23, 24 25 and 26 and may exclude an economic operator from those economic operators from which it will make the selection of economic operators to be invited to tender only if the economic operator—

- (a) may be treated as ineligible to tender on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
 - (i) economic and financial standing; or
 - (ii) technical or professional ability.

(8) The contracting authority shall make the selection of the economic operators to be invited to tender in accordance with regulations 23, 24, 25 and 26 and shall award the contract in accordance with regulation 31.

(9) Where there is a sufficient number of economic operators suitable to be selected to be invited to tender, the contracting authority may limit the number of economic operators which it intends to invite to tender where the contract notice specifies—

- (a) the objective and non-discriminatory criteria to be applied in order to limit the number of economic operators in accordance with this subregulation; and
- (b) the minimum number of economic operators, which shall be not less than 5, which the contracting authority intends to invite to tender and, where appropriate, the maximum number.

(10) The contracting authority shall ensure that the number of economic operators invited to tender is—

- (a) sufficient to ensure genuine competition; and
- (b) at least equal to the minimum number specified by the contracting authority in accordance with subregulation (9)(b).

(11) Subject to subregulation (10)(a), where—

- (a) the contracting authority carries out a selection in accordance with regulations 23, 24, 25 and 26; and
- (b) the number of economic operators selected to be invited to tender is less than the minimum number specified by the contracting authority in the contract notice,

that contracting authority may continue the award procedure with the economic operators which have been selected, provided that any economic operator not selected or which did not request to participate is not included.

(12) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing; or
- (b) technical or professional ability,

if those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(13) The contracting authority shall send invitations in writing simultaneously to each economic operator selected to tender for the contract and the invitation shall—

- (a) be accompanied by the contract documents;
- (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or
- (c) where the contract documents are held by an entity other than the contracting authority, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.

(14) Where the contract documents are held by an entity other than the contracting authority, the contracting authority shall ensure that the contract documents are sent to economic operators by the most rapid means of communication possible.

(15) The contracting authority shall include the following information in the invitation—

- (a) the final date for the receipt by it of tenders, the address to which they must be sent and the one or more languages in which they must be drawn up;
- (b) a reference to the contract notice published in accordance with subregulation (2);
- (c) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with regulations 24, 25 and 26; and
- (d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with subregulation (2).

(16) Subject to subregulations (18) and (19), the date which the contracting authority fixes as the last date for the receipt by it of tenders and which is specified in the invitation to tender in accordance with

subregulation (15)(a), shall be not less than 40 days from the date of the despatch of the invitation.

(17) Where compliance with the minimum time limit of 40 days referred to in subregulation (16) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit, a time limit of not less than 10 days from the date of despatch of the invitation.

(18) Where—

- (a) the contracting authority has published a prior information notice in accordance with regulation 11;
- (b) the prior information notice contained as much of the information referred to in the form of a contract notice in Annex II to Commission Regulation (EU) No 842/2011 as was available at the time of publication; and
- (c) the prior information notice was sent to the Official Journal at least 52 days and not more than 12 months before the date on which the contract notice provided for in subregulation (2) is despatched,

the contracting authority may substitute for the period of not less than that 40 days in subregulation (16), a period of generally not less than 36 days and in any event not less than 22 days.

(19) The contracting authority may reduce the time limits for the receipt by it of tenders referred to in subregulations (16) and (18) by 5 days if—

- (a) the contracting authority offers unrestricted and full direct access by electronic means to the contract documents from the date of publication of the contract notice; and
- (b) the contract notice specifies the internet address at which the documents referred to in paragraph (a) are available.

(20) The contracting authority or entity referred to in subregulation (13)(c) shall supply such further information relating to the contract documents as may be reasonably requested by an economic operator provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 4 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders.

(21) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the contracting authority to respond in accordance with subregulation (20) and, for whatever reason, the contract documents or further information are not supplied in accordance with that subregulation; or
- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(22) The contracting authority may combine the reductions in the periods of time referred to in subregulations (5) and (19).

The negotiated procedure.

17.(1) Subject to subregulation (2), a contracting authority using the negotiated procedure shall comply with this regulation.

(2) A contracting authority using the negotiated procedure in accordance with regulation 14 need only comply with subregulations (9) and (10) of this regulation.

(3) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal as soon as possible after forming the intention a notice, in the form of the contract notice in Annex II to Commission Regulation (EU) No 842/2011, inviting requests to be selected to negotiate and containing the information therein specified.

(4) The contracting authority shall indicate whether the negotiated procedure will take place in successive stages in accordance with subregulation (22)—

- (a) in the contract notice; or
- (b) in that notice and the contract documents.

(5) Subject to subregulations (7) and (8), the date which the contracting authority fixes as the last date for the receipt by it of requests to be selected to negotiate shall be specified in the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(6) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in particular, the complexity of the contract when fixing time limits for the receipt by it of requests to be selected to negotiate the contract.

(7) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limit referred to in subregulation (5) may be reduced by 7 days.

(8) Where compliance with the minimum time limit of 37 days referred to in subregulation (5) is rendered impractical for reasons of urgency, the contracting authority may substitute for that time limit—

- (a) a time limit of not less than 15 days from the date of despatch of the contract notice; or
- (b) where the contracting authority has transmitted the contract notice by electronic means in accordance with subregulation (7), a time limit of not less than 10 days from the date of despatch of the contract notice.

(9) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude an economic operator from those economic operators from which it will make the selection of economic operators to be invited to negotiate the contract only if the economic operator—

- (a) may be treated as ineligible on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
 - (i) economic and financial standing; or
 - (ii) technical or professional ability.

(10) The contracting authority shall make the selection of the economic operators to be invited to negotiate in accordance with regulations 23, 24, 25 and 26 and shall award the contract in accordance with regulation 31.

(11) Where there is a sufficient number of economic operators suitable to be selected to negotiate, the contracting authority may limit the number of economic operators which it intends to invite to negotiate the contract provided that the contract notice specifies—

- (a) the objective and non-discriminatory criteria to be applied in order to limit the number of economic operators in accordance with this subregulation; and
- (b) the minimum number of economic operators, which shall be not less than 3, which the contracting authority intends to invite to negotiate and, where appropriate, the maximum number.

(12) The contracting authority shall ensure that the number of economic operators invited to negotiate is—

- (a) sufficient to ensure genuine competition; and
- (b) at least equal to the minimum number specified by the contracting authority in accordance with subregulation (11)(b).

(13) Subject to subregulation (12)(a), where—

- (a) the contracting authority carries out a selection in accordance with regulations 23, 24, 25 and 26; and
- (b) the number of economic operators selected to be invited to negotiate is less than the minimum number specified by the contracting authority in the contract notice,

that contracting authority may continue the award procedure with the economic operators which have been selected, provided that any economic operator not selected or which did not request to participate is not included.

(14) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing; or
- (b) technical or professional ability,

if those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(15) The contracting authority shall send invitations in writing simultaneously to each economic operator selected to negotiate and the invitation shall—

- (a) be accompanied by the contract documents;

- (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or
- (c) where the contract documents are held by an entity other than the contracting authority, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.

(16) Where the contract documents are held by an entity other than the contracting authority, the contracting authority shall ensure that the contract documents are sent to economic operators by the most rapid means of communication possible.

(17) The contracting authority shall include in the invitation–

- (a) the final date for the receipt by it of replies, the address to which they must be sent and the one or more languages in which they must be drawn up;
- (b) a reference to the contract notice published in accordance with subregulation (3);
- (c) an indication of the information to be included with the reply which the contracting authority may require to be provided in accordance with regulations 24, 25 and 26; and
- (d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with subregulation (3).

(18) The contracting authority or entity referred to in subregulation (15)(c) shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator provided that the request for such information is received in sufficient time to enable the contracting authority to supply it–

- (a) not less than 6 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders; or
- (b) in the case of urgency where subregulation (8) applies, not less than 4 days before the date specified in the invitation to tender as the final date for the receipt by it of tenders.

(19) The contracting authority shall extend the time limit for receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow a contracting authority to respond in accordance with subregulation (18) and, for whatever reason, the contract documents are not supplied in accordance with that subregulation; or
- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(20) Where the contracting authority needs to identify the best tender in order to award the public contract in accordance with regulation 31(1), that contracting authority shall negotiate with economic operators which have submitted tenders with the aim of adapting the tenders to the requirements specified in the contract documents.

(21) During any negotiations which take place in accordance with this regulation, a contracting authority shall ensure equal treatment among all economic operators and in particular, shall not provide information in a discriminatory manner which may give some economic operators an advantage over other economic operators.

(22) The contracting authority may provide for the negotiated procedure to take place in successive stages in order to reduce the number of tenders to be negotiated by applying the award criteria in the contract documents.

(23) Where the contracting authority provides for the negotiated procedure to take place in successive stages in accordance with subregulation (22), it shall ensure that the number of economic operators to be invited to negotiate the contract at the final stage is sufficient to ensure genuine competition to the extent that there is a sufficient number of economic operators to do so.

The competitive dialogue procedure.

18.(1) In this regulation—

“particularly complex contract” means a contract where a contracting authority is not objectively able to—

- (a) define the technical means in accordance with regulation 9(7), (8) and (9) capable of satisfying its needs or objectives;

- (b) specify either the legal or financial make-up of a project or both;

“participant” means an economic operator selected by a contracting authority using the procedure referred to in subregulation (2) to participate in the competitive dialogue procedure.

(2) Where a contracting authority wishes to award a particularly complex contract and considers that the use of the open or restricted procedure will not allow the award of that contract, the contracting authority may use the competitive dialogue procedure.

(3) A contracting authority using the competitive dialogue procedure shall comply with subregulations (4) to (29) of this regulation.

(4) The contracting authority shall publicise its intention to seek offers in relation to the public contract by sending to the Official Journal, as soon as possible after forming the intention, a notice in the form of a contract notice in Annex II to Commission Regulation (EU) No 842/2011, inviting requests to participate and containing the information therein specified.

(5) The contracting authority shall specify its needs and requirements in the contract notice and shall define those needs and requirements–

- (a) in the contract notice;
- (b) in the descriptive document; or
- (c) in both those documents.

(6) The contracting authority shall indicate that it may provide for the competitive dialogue procedure to take place in successive stages in accordance with subregulation (22)–

- (a) in the contract notice; or
- (b) in that notice and the descriptive document.

(7) Subject to subregulation (9), the date which the contracting authority fixes as the last date for the receipt by it of requests to be selected to participate shall be specified in the contract notice and shall be not less than 37 days from the date of the despatch of the notice.

(8) Subject to any minimum time limit specified by this regulation, the contracting authority shall take account of all the circumstances, in

particular, the complexity of the contract when fixing time limits for the receipt by it of requests to be selected to participate in the dialogue.

(9) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limit referred to in subregulation (7) may be reduced by 7 days.

(10) The contracting authority shall make its evaluation in accordance with regulations 23, 24, 25 and 26 and may exclude an economic operator from those economic operators from which it will make the selection of economic operators to be invited to participate in the dialogue only if the economic operator—

- (a) may be treated as ineligible on a ground specified in regulation 23; or
- (b) fails to satisfy the minimum standards required of economic operators by the contracting authority of—
 - (i) economic and financial standing; or
 - (ii) technical or professional ability.

(11) The contracting authority shall make the selection of the economic operators to be invited to participate in the dialogue in accordance with regulations 23, 24, 25 and 26.

(12) Where there is a sufficient number of economic operators suitable to be selected to participate in the dialogue, the contracting authority may limit the number of economic operators which it intends to invite to participate in the dialogue provided that the contract notice specifies—

- (a) the objective and non-discriminatory criteria to be applied in order to limit the number of economic operators in accordance with this subregulation; and
- (b) the minimum number of economic operators, which shall be not less than 3, which the contracting authority intends to invite to participate in the dialogue and, where appropriate, the maximum number.

(13) The contracting authority shall ensure that the number of economic operators invited to participate in the dialogue is—

- (a) sufficient to ensure genuine competition; and

- (b) at least equal to the minimum number specified by the contracting authority in accordance with subregulation (12)(b).

(14) Subject to subregulation (13)(a), where—

- (a) the contracting authority carries out a selection in accordance with regulations 23, 24, 25 and 26; and
- (b) the number of economic operators selected to be invited to participate in the dialogue is less than the minimum number specified by the contracting authority in the contract notice,

that contracting authority may continue the award procedure with the economic operators which have been selected, provided that any economic operator not selected or which did not request to participate is not included.

(15) The contracting authority may require an economic operator to satisfy minimum levels of—

- (a) economic and financial standing; or
- (b) technical or professional ability,

if those minimum levels are specified in the contract notice and are related to and proportionate to the subject matter of the contract.

(16) The contracting authority shall send invitations in writing simultaneously to each economic operator selected to participate in the dialogue and the invitation shall—

- (a) be accompanied by the contract documents;
- (b) specify the internet address which offers unrestricted and full direct access by electronic means to the contract documents; or
- (c) where the contract documents are held by an entity other than the contracting authority, specify the address to which requests for contract documents should be sent including any final date for making such requests and the amount and any method of payment of any fee which may be charged for supplying that information.

(17) Where the contract documents are held by an entity other than the contracting authority, the contracting authority shall ensure that the contract

documents are sent to economic operators by the most rapid means of communication possible.

(18) The contracting authority shall include the following information in the invitation–

- (a) the date specified for the commencement of the competitive dialogue, the address to which replies must be sent and the one or more languages in which they must be drawn up;
- (b) a reference to the contract notice published in accordance with subregulation (4);
- (c) an indication of the information to be included with the reply which the contracting authority may require to be provided in accordance with regulations 24, 25 and 26; and
- (d) the relative weighting of criteria for the award of the contract or, where appropriate, the descending order of importance for such criteria, if this information was not specified in the contract notice published in accordance with subregulation (4).

(19) The contracting authority or entity referred to in subregulation (16)(c) shall supply such further information to the economic operator relating to the contract documents or the descriptive document as may reasonably be requested by that economic operator provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 6 days before the date specified in the invitation to tender as the final date of the receipt by it of tenders.

(20) The contracting authority shall open with the participants selected in accordance with regulations 23, 24, 25 and 26, a dialogue the aim of which shall be to identify and define the means best suited to satisfying its needs.

(21) During the competitive dialogue procedure, a contracting authority–

- (a) may discuss all aspects of the contract with the participants selected;
- (b) shall ensure equality of treatment among all participants and, in particular, shall not provide information in a discriminatory manner which may give some participants an advantage over others; and

- (c) shall not reveal to the other participants solutions proposed or any confidential information communicated by a participant without that participant's agreement.

(22) The contracting authority may provide for the competitive dialogue procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or in the descriptive document.

(23) Where the contracting authority provides for the competitive dialogue procedure to take place in successive stages in accordance with subregulation (22), it shall ensure that the number of economic operators to be invited to participate at the final stage is sufficient to ensure genuine competition to the extent that there is a sufficient number of economic operators to do so.

(24) The contracting authority may continue the competitive dialogue procedure until it can identify one or more solutions, if necessary after comparing them, capable of meeting its needs.

(25) Where the contracting authority declares that the dialogue is concluded, it shall—

- (a) inform each participant that the dialogue is concluded;
- (b) request each participant to submit its final tender containing all the elements required and necessary for the performance of the project on the basis of any solution presented and specified during the dialogue; and
- (c) specify in the invitation to submit a tender the final date for the receipt by it of tenders, the address to which they must be sent and the language or languages in which they must be drawn up.

(26) The contracting authority may request a participant to clarify, specify or fine-tune a tender referred to in subregulation (25)(b), but such clarification, specification, fine-tuning or additional information shall not involve changes to the basic features of the tender or the call for tender when those variations are likely to distort competition or have a discriminatory effect.

(27) The contracting authority shall assess the tenders received on the basis of the award criteria specified in the contract notice or descriptive document and shall award the contract to the participant which submits the most economically advantageous tender in accordance with regulation 31(1)(a).

(28) The contracting authority may request the participant identified as having submitted the most economically advantageous tender to clarify aspects of that tender or confirm commitments contained in the tender if this does not have the effect of modifying substantial aspects of the tender or of the call for tender and does not risk distorting competition or causing discrimination.

(29) The contracting authority may specify that payments may be made to a participant in respect of the participant's expenses incurred in participating in the competitive dialogue procedure.

Framework agreements.

19.(1) A contracting authority which intends to conclude a framework agreement shall comply with this regulation.

(2) Where the contracting authority intends to conclude a framework agreement, it shall—

- (a) follow one of the procedures set out in regulation 15, 16, 17 or 18 up to (but not including) the beginning of the procedure for the award of any specific contract set out in this regulation; and
- (b) select an economic operator to be party to a framework agreement by applying award criteria set in accordance with regulation 31.

(3) Where the contracting authority awards a specific contract based on a framework agreement, it shall—

- (a) comply with the procedures set out in this regulation; and
- (b) apply those procedures only to the economic operators which are party to the framework agreement.

(4) When awarding a specific contract on the basis of a framework agreement neither the contracting authority nor the economic operator shall include in that contract terms that are substantially amended from the terms laid down in that framework agreement.

(5) Where the contracting authority concludes a framework agreement with one economic operator—

- (a) it shall award any specific contract within the limits of the terms laid down in the framework agreement; and

- (b) in order to award a specific contract, the contracting authority may consult in writing the economic operator which is party to the framework agreement requesting that economic operator to supplement its tender if necessary.

(6) Where the contracting authority concludes a framework agreement with more than one economic operator, the minimum number of economic operators shall be 3, insofar as there is a sufficient number of—

- (a) economic operators to satisfy the selection criteria; or
- (b) admissible tenders which meet the award criteria.

(7) Where the contracting authority concludes a framework agreement with more than one economic operator, a specific contract may be awarded—

- (a) by application of the terms laid down in the framework agreement without re-opening competition; or
- (b) where not all the terms of the proposed contract are laid down in the framework agreement, by re-opening competition between the economic operators which are parties to that framework agreement and which are capable of performing the proposed contract in accordance with subregulations (8) and (9).

(8) Where the contracting authority is following the procedure set out in subregulation (7)(b), it shall re-open the competition on the basis of the same or, if necessary, more precisely formulated terms, and where appropriate other terms referred to in the contract documents based on the framework agreement.

(9) Where the contracting authority is following the procedure set out in subregulation (7)(b), for each specific contract awarded it shall—

- (a) consult in writing the economic operators capable of performing the contract and invite them within a specified time limit to submit a tender in writing for each specific contract to be awarded;
- (b) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the contract and the time needed to send in tenders;

- (c) keep each tender confidential until the expiry of the time limit for the receipt by it of tenders; and
- (d) award each contract to the economic operator which has submitted the best tender on the basis of the award criteria specified in the contract documents based on the framework agreement.

(10) The contracting authority shall not conclude a framework agreement for a period which exceeds 4 years except in exceptional circumstances, in particular, circumstances relating to the subject of the framework agreement.

(11) In this regulation, a “specific contract” means a contract based on the terms of a framework agreement.

(12) The contracting authority shall not use a framework agreement improperly or in such a way as to hinder, prevent, limit or distort competition.

Dynamic purchasing systems.

20.(1) A contracting authority using a dynamic purchasing system shall comply with this regulation.

(2) The contracting authority which seeks to establish a dynamic purchasing system shall comply with the requirements of regulation 46(2) to (7) and shall use only electronic means to—

- (a) establish that system; and
- (b) award contracts under it.

(3) The contracting authority shall use the open procedure in accordance with regulation 15 to establish a dynamic purchasing system up to the beginning of the procedure for the award of contracts under the system set out in this regulation.

(4) When establishing a dynamic purchasing system, the contracting authority shall—

- (a) send to the Official Journal, as soon as possible after forming the intention, a notice, in the form of the contract notice in Annex II to Commission Regulation (EU) No 842/2011, stating that a dynamic purchasing system is to be established; and
- (b) produce a specification which indicates—

- (i) the nature of the goods, work, works or services intended to be purchased under that system; and
- (ii) information concerning the purchasing system, the electronic equipment to be used in its operation, the arrangements for technical connection to the system, the rules governing its operation and any other necessary information relating to the system.

(5) When establishing a dynamic purchasing system the contracting authority may also produce additional documents relating to the operation of the system.

(6) Where the contracting authority establishes a dynamic purchasing system it shall—

- (a) offer unrestricted, direct and full access to the specification and to any additional documents by electronic means from the date of publication of the contract notice to the date when the system ceases to be operated; and
- (b) indicate in the contract notice the internet address at which those documents may be examined.

(7) Throughout the duration of the dynamic purchasing system, the contracting authority shall—

- (a) give any economic operator the opportunity to—
 - (i) submit an indicative tender; and
 - (ii) be admitted to that system under the conditions referred to in subregulation (8); and
- (b) complete the evaluation of an indicative tender within 15 days from the date of its submission or such longer period as the contracting authority may determine if no invitation to tender is issued under the system as provided in subregulation (13) within the 15 day period.

(8) The contracting authority shall admit to the dynamic purchasing system each economic operator which satisfies the selection criteria and has submitted an indicative tender which complies with the specification and any additional documents produced by the contracting authority in accordance with subregulation (5) when establishing the system.

(9) The contracting authority shall as soon as possible notify an economic operator of its admission to a dynamic purchasing system or of the rejection of its indicative tender and shall do so in writing if requested by the economic operator.

(10) An economic operator which is admitted to a dynamic purchasing system may improve its indicative tender at any time provided that the improved tender complies with the specification described in subregulation (4)(b).

(11) Where the contracting authority proposes to award a contract under a dynamic purchasing system, it shall send to the Official Journal, as soon as possible after forming the intention, a notice, in the form of a simplified notice in Annex IX to Commission Regulation (EU) No 842/2011, inviting economic operators (including any economic operator which is not admitted to the system) to submit an indicative tender in accordance with subregulation (7)(a)(i) not less than 15 days from the date of the despatch of the simplified contract notice.

(12) The indicative tenders received within the period specified in subregulation (11) shall be evaluated by the contracting authority before it proceeds with the issue of invitations to submit tenders in relation to any contract to be awarded under the dynamic purchasing system to an economic operator admitted to the system.

(13) The contracting authority shall invite all economic operators admitted to the dynamic purchasing system to submit a tender for each contract within a time limit specified by the contracting authority.

(14) For each contract to be awarded under the dynamic purchasing system, the contracting authority—

- (a) shall award the contract to the economic operator which submits the tender which best meets the award criteria specified in the contract notice for the establishment of the dynamic purchasing system; and
- (b) may, if appropriate, formulate those award criteria more precisely in the invitation to submit tenders.

(15) The contracting authority shall not charge any economic operator seeking admission to a dynamic purchasing system or which has been admitted to such a system in relation to any aspect of that system.

(16) A dynamic purchasing system established by the contracting authority may not be operated for more than 4 years, unless there are exceptional circumstances.

(17) The contracting authority shall not use a dynamic purchasing system improperly or in such a way as to hinder, prevent, limit or distort competition.

Electronic auctions.

21.(1) A contracting authority which holds an electronic auction shall comply with this regulation.

(2) Subject to subregulation (3), the contracting authority may hold an electronic auction when using the—

- (a) open procedure;
- (b) restricted procedure;
- (c) negotiated procedure in the circumstances referred to in regulation 13(a) and 14(1)(a)(i);
- (d) procedure set out in regulation 19(7)(b) on the re-opening of competition among the parties to a framework agreement; or
- (e) procedure set out in regulation 20 on the opening of competition for contracts to be awarded under a dynamic purchasing system.

(3) The contracting authority shall not hold an electronic auction to precede the award of a public services contract or a public works contract having as its subject matter intellectual performance, such as the design of works.

(4) The contracting authority may only hold an electronic auction to precede the award of a contract when the contract specification can be established with precision.

(5) The contracting authority shall base an electronic auction on—

- (a) price alone where the contract is to be awarded on the basis of the lowest price; or
- (b) price or the values of quantifiable elements of tenders indicated in the contract specification, where the contract is to be

awarded on the basis of the offer which is the most economically advantageous in accordance with regulation 31 (1)(a).

(6) Where the contracting authority intends to hold an electronic auction it shall state this in the contract notice.

(7) A contract specification prepared by the contracting authority in relation to a contract the award of which is to be preceded by an electronic auction shall include—

- (a) the quantifiable elements of tenders capable of expression in figures or percentages which will be the subject of the electronic auction;
- (b) any limitations on the values for the quantifiable elements of tenders (resulting from the contract specification) which may be submitted in the electronic auction;
- (c) the information to be made available to economic operators during the electronic auction and, where appropriate, an indication of when it will be made available to them;
- (d) a description of the electronic auction process;
- (e) the conditions under which the economic operators will be able to bid and, in particular, the minimum differences which may be required when bidding; and
- (f) all relevant information concerning—
 - (i) the electronic system to be used in the electronic auction; and
 - (ii) the arrangements for and technical specifications relevant to connection to the electronic system to be used.

(8) Before proceeding with an electronic auction, the contracting authority shall—

- (a) make an initial evaluation of the tenders in accordance with the award criteria specified and with the weighting fixed for them; and

- (b) by electronic means simultaneously invite all the economic operators which have submitted admissible tenders to submit new prices or new values in the electronic auction.

(9) Where the contracting authority is to award a contract on the basis of the offer which is the most economically advantageous to it in accordance with regulation 31(1)(a), each invitation referred to in subregulation (8)(b) shall include the outcome of the evaluation of the tender submitted by the economic operator to which the invitation is sent, carried out in accordance with the weighting described in regulation 31(3).

(10) The contracting authority shall include in the invitation referred to in subregulation (8)(b)–

- (a) all relevant information concerning individual connection to the electronic system to be used in the electronic auction;
- (b) the date and time of the start of the electronic auction;
- (c) the number of phases in the electronic auction;
- (d) the mathematical formula to be used in the electronic auction to determine automatic re-ranking of tenders on the basis of the new prices or new values submitted by economic operators and incorporating the weighting of all the criteria set to determine the most economically advantageous tender;
- (e) where variant bids are authorised by the contracting authority, a separate mathematical formula for each variation; and
- (f) the basis on which the electronic auction is to be closed and the appropriate additional information specified in subregulation (16).

(11) In relation to the formula referred to in subregulation (10)(d), any ranges used in the weighting of criteria shall be set at a specified value before the invitation is sent to economic operators.

(12) At least two working days must elapse between the date on which the invitation referred to in subregulation (8)(b) is sent and the date of the electronic auction.

(13) During each phase of an electronic auction, the contracting authority–

- (a) shall instantaneously communicate to all economic operators participating in the auction at least sufficient information to

enable them to ascertain their relative rankings in the auction at any time;

- (b) may communicate to each economic operator other information concerning prices or values submitted by other economic operators provided that this has been stated in the contract specification; and
- (c) may disclose the number of economic operators participating in that phase of the auction.

(14) During any phase of an electronic auction the contracting authority holding the auction may not disclose the identity of any economic operator participating in the auction.

(15) The contracting authority shall close an electronic auction—

- (a) at the date and time fixed for closure in the invitation referred to in subregulation (8)(b);
- (b) when it receives no further new prices or new values which meet the requirements concerning minimum differences; or
- (c) when the number of phases in the electronic auction specified in the invitation referred to in subregulation (8)(b) has been completed.

(16) Where the contracting authority intends to close an electronic auction—

- (a) as described in subregulation (15)(b), it shall state in the invitation referred to in subregulation (8)(b) the period which it intends to allow to elapse before it closes the auction after receiving a submission from an economic operator participating in the auction; or
- (b) as described in subregulation (15)(c), it shall state in the invitation referred to in subregulation (8)(b) the timetable for each phase in the auction.

(17) After closing an electronic auction the contracting authority shall award the contract in accordance with regulation 30 on the basis of the results of the electronic auction.

(18) The contracting authority shall not use an electronic auction improperly or in such a way as to hinder, prevent, restrict or distort

competition or to change the subject matter of the contract as referred to in the contract notice and defined in the specification.

(19) The references to values in subregulations (5)(b), (8)(b), (10)(d), (13)(b) and (15)(b) shall be interpreted as including price.

Central purchasing bodies.

22.(1) A contracting authority may purchase work, works, goods or services from or through a central purchasing body.

(2) Where a contracting authority makes purchases in accordance with subregulation (1), it shall be deemed to have complied with these Regulations to the extent that the central purchasing body has complied with them.

PART 4
SELECTION OF ECONOMIC OPERATORS

Criteria for the rejection of economic operators.

23.(1) Subject to subregulation (2), a contracting authority shall treat as ineligible and shall not select an economic operator in accordance with these Regulations if the contracting authority has actual knowledge that the economic operator or its directors or any other person who has powers of representation, decision or control of the economic operator has been convicted of any of the following offences—

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA of 21 December 1998, on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351, 29.12.1998, p. 1), as the same may be amended from time to time;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195, 25.6.1997, p.1), as the same may be amended from time to time;
- (c) corruption as defined in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating

corruption in the private sector (OJ L 192, 31.7.2003, p.54), as the same may be amended from time to time;

- (d) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities (OJ C 316, 27.11.1995, p.49), as the same may be amended from time to time;
- (e) terrorist offences or offences linked to terrorist activities, as respectively defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p.3), as the same may be amended from time to time or inciting, aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- (f) money laundering and terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p.15), as the same may be amended from time to time and as more specifically set out in sections 2, 3 and 4 of the Crime (Money Laundering and Proceeds) Act 2007; or
- (g) any other offence within the meaning of Article 45 (1) of the Public Sector Directive as defined by the national laws of the Member States.

(2) In any case where an economic operator or its directors or any other person who has powers of representation, decision or control has been convicted of an offence described in subregulation (1), a contracting authority may disregard the prohibition described there if it is satisfied that there are overriding requirements in the general interest which justify doing so in relation to that economic operator.

(3) A contracting authority may apply to the relevant competent authority to obtain further information regarding the economic operator and in particular details of convictions of the offences listed in subregulation (1) if it considers it needs such information to reach the decision referred to in that subregulation.

(4) A contracting authority may treat an economic operator as ineligible or decide not to select an economic operator in accordance with these Regulations on one or more of the following grounds, namely that the economic operator—

- (a) being an individual is a person in respect of whom a debt relief order has been made or is bankrupt or has had a receiving order or administration order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt provable in bankruptcy within the meaning of the Bankruptcy Act has granted a trust deed for creditors or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of his estate, or is the subject of any similar procedure under the law of any other State;
- (b) being a partnership constituted under the law of Gibraltar, granted a trust deed or become otherwise apparently insolvent, or is the subject of a petition presented for sequestration of its estate;
- (c) being a company or any other entity within the meaning of section 2 or 351 of the Companies Act has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purpose of bona fide reconstruction or amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of the above procedures or is the subject of similar procedures under the law of any State;
- (d) has been convicted of a criminal offence relating to the conduct of the economic operator's business or profession;
- (e) has committed an act of grave misconduct in the course of his business or profession;
- (f) has not fulfilled obligations relating to the payment of social security contributions under the law of Gibraltar or of the relevant State in which the economic operator is established;
- (g) has not fulfilled obligations relating to the payment of taxes under the law of Gibraltar or of the relevant State in which the economic operator is established;
- (h) is guilty of serious misrepresentation in providing any information referred to within this regulation or regulation 24,

25, 26 or 27, or has not provided such information in response to a request by the contracting authority;

- (i) in relation to procedures for the award of a public services contract, is not licensed in the place where the economic operator is established or is not a member of an organisation in that place when the law of that place prohibits the provision of the services to be provided under the contract by a person who is not so licensed or who is not such a member; or
- (j) subject to subregulations (7) to (13), is required to be registered on the professional or trade register of the relevant State specified in Schedule 5 in which the economic operator is established in order to pursue its professional activity and is not so registered.

(5) The contracting authority may require an economic operator to provide such information as it considers it needs to make the evaluation in accordance with subregulations (1) and (4) except that it shall accept as conclusive evidence that an economic operator does not fall within the grounds specified in subregulations (1) and (4)(a), (b), (c), (d), (f) or (g) if that economic operator provides to the contracting authority-

- (a) in relation to the grounds specified in subregulations (1) and (4)(a), (b), (c) or (d)-
 - (i) an extract from the judicial record; or
 - (ii) in a relevant State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;
- (b) in relation to the grounds specified in subregulations (4)(f) or (g), a certificate issued by the relevant competent authority; and
- (c) in a relevant State where the documentary evidence specified in subregulations (5)(a) and (b) is not issued in relation to one of the grounds specified in subregulations (1), (4)(a), (b), (c), (d), (f) or (g), a declaration on oath made by the economic operator before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths.

(6) In this regulation, “relevant” in relation to a judicial, administrative or competent authority, notary public or Commissioner for oaths means an authority designated by, or a notary public or Commissioner for oaths in

Gibraltar or in the relevant State in which the economic operator is established.

(7) An economic operator established in Gibraltar, the United Kingdom or Ireland shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j) if the economic operator is established in either State and is either—

- (a) certified as incorporated by their respective Registrar of Companies; or
- (b) certified as having declared on oath that it is carrying on business in the trade in question in Gibraltar or the State in which it is established at a specific place of business and under a specific trading name.

(8) An economic operator established in Cyprus shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j) if—

- (a) in relation to procedures for the award of a public services contract or a public supply contract the economic operator is either—
 - (i) certified as incorporated by the Registrar of Companies and Official Receiver (EjoroV Etairei—n kai EpíoymoV ParalípthV); or
 - (ii) certified as having declared on oath that the economic operator is carrying on business in the trade in question in Cyprus at a specific place of business and under a specific trading name; or
- (b) in relation to procedures for the award of a public works contract the economic operator is certified by the Council for the Registration and Audit of Civil Engineering and Building Contractors (130 umboúlio EggrajúV kai Elégcou Ergolhptén Oikodomikénkai Teknikén 'Ergwn) according to the Registration and Audit of Civil Engineering and Building Contractors Law of Cyprus.

(9) An economic operator established in Malta shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j) if—

- (a) the economic operator produces its “numru ta5/8 registrazzjoni tat- Taxxa tal- Valur Mizjud (VAT) u n- numru tal-licenzja ta5/8 kummerc”; and
- (b) where the economic operator is a member of a partnership or is a company, it produces the relevant registration number issued by the Malta Financial Services Authority.

(10) In relation to procedures for the award of a public services contract, an economic operator established in Greece shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j)–

- (a) when the services to be provided under the contract are specified in category 8 of Schedule 2 and when Greek legislation requires persons who provide those services to be registered on the professional register (and), if it is registered on that register; and
- (b) in any other case, in accordance with subregulation (11).

(11) In relation to procedures for the award of a public services contract, an economic operator established in Hungary shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j) if the economic operator is certified as being entitled to be engaged in the trade in question in Hungary.

(12) In relation to procedures for the award of a public supply contract, an economic operator established in Spain shall be treated as registered on the professional or trade register for the purposes of subregulation (4)(j) if the economic operator is certified as having declared on oath that it is entitled to be engaged in the trade in question in Spain.

(13) An economic operator established in a relevant State, other than the United Kingdom or Ireland, which either has an equivalent professional or trade register which is not listed in Schedule 5 or which does not have an equivalent professional or trade register shall be treated as registered on a professional or trade register for the purposes of subregulation (4)(j) on production of either a certificate that he is registered on the equivalent professional or trade register or where no such register exists, a declaration on oath, or in a relevant State which does not provide for a declaration on oath a solemn declaration, made by the economic operator before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths, that he exercises the particular profession or trade.

Information as to economic and financial standing.

24.(1) Subject to regulation 27 and subregulation (2), in assessing whether an economic operator meets any minimum standards of economic and financial standing required of economic operators by the contracting authority—

- (a) for the purposes of regulation 15(11), 16(7), 17(9) or 18(10); and
- (b) in selecting the economic operators to be invited to tender for or to negotiate the contract in accordance with regulations 16(8), 17(10) or 18(11),

a contracting authority may take into account any of the following information—

- (i) appropriate statements from the economic operator's bankers or where appropriate, evidence of relevant professional risk indemnity insurance;
- (ii) statements of accounts or extracts from those accounts relating to the business of the economic operator where publication of the statement is required under the law of the place where the economic operator is established; or
- (iii) where appropriate, a statement, covering the 3 previous financial years of the economic operator, of-
 - (aa) the overall turnover of the business of the economic operator; and
 - (bb) where appropriate, the turnover in respect of the work, works, goods or services which are of a similar type to the subject matter of the public contract.

(2) Where the information specified in subregulation (1) is not appropriate in a particular case, a contracting authority may require an economic operator to provide other information to demonstrate the economic operator's economic and financial standing.

(3) A contracting authority which requires information to be provided in accordance with subregulations (1) and (2) shall specify in the contract

notice or in the invitation to tender the information which the economic operator must provide.

(4) Where appropriate—

- (a) an economic operator or a group of economic operators as referred to in regulation 28 may rely on the capacities of other entities or participants in the group, regardless of the legal nature of the link between the economic operator or group of economic operators and the other entities; and
- (b) the economic operator or the group of economic operators shall prove to the contracting authority that the resources necessary to perform the contract will be available and the contracting authority may, in particular, require the economic operator to provide an undertaking from the other entities to that effect.

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

Information as to technical or professional ability.

25.(1) Subject to regulation 27, in assessing whether an economic operator meets any minimum standards of technical or professional ability required of economic operators by the contracting authority—

- (a) for the purposes of regulations 15(11), 16(7), 17(9) or 18(10); and
- (b) in selecting the economic operators to be invited to tender for or to negotiate the contract in accordance with regulations 16(8), 17(10) or 18(11),

a contracting authority may have regard to any means listed in subregulation (2) according to the purpose, nature, quantity or importance of the contract.

(2) The means referred to in subregulation (1) are—

- (a) in the case of a public services contract, a public works contract or a public supply contract requiring the siting or installation of work, the economic operator's technical or professional ability where he is an individual, taking into account in particular his skills, efficiency, experience and reliability;

- (b) a list of works carried out over the past 5 years together with (unless the contracting authority specifies that the following certificate should be submitted direct to the contracting authority by the person certifying) certificates of satisfactory completion for the most important of those works indicating in each case—
 - (i) the value of the consideration received;
 - (ii) when and where the work or works were carried out; and
 - (iii) specifying whether they were carried out according to the rules of the trade or profession and properly completed;
- (c) a statement of the principal goods sold or services provided by the supplier or the services provider in the past 3 years and—
 - (i) the dates on which the goods were sold or the services provided;
 - (ii) the consideration received;
 - (iii) the identity of the person to whom the goods were sold or the services were provided;
 - (iv) any certificate issued or countersigned by that person confirming the details of the contract for those goods sold or services provided; and
 - (v) where—
 - (aa) that person was not a contracting authority; and
 - (bb) the certificate referred to in paragraph (c)(iv) is not available,any declaration by the economic operator attesting the details of the goods sold or services provided;
- (d) a statement of the technicians or technical services available to the economic operator to—
 - (i) carry out the work under the contract; or

- (ii) be involved in the production of goods or the provision of services under the contract;

particularly those responsible for quality control, whether or not they are independent of the economic operator,

- (e) in relation to the goods to be purchased or hired or the services to be provided under the contract, a statement of the supplier's or services provider's—

- (i) technical facilities;
- (ii) measures for ensuring quality; and
- (iii) study and research facilities;

- (f) where the goods to be sold or hired or the services to be provided under the contract are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the relevant State in which the supplier or services provider is established—

- (i) on the technical capacity of the supplier or services provider in relation to the goods to be purchased or hired or the services to be provided under the contract; and
- (ii) if relevant, on the supplier's or services provider's study and research facilities and quality control measures;

- (g) the services provider's or contractor's educational and professional qualifications where the services provider or contractor is an individual and—

- (i) if any, those of the services provider's or contractor's managerial staff; and
- (ii) those of the one or more persons who would be responsible for providing the services or carrying out the work or works under the contract;

- (h) the environmental management measures, evidenced in accordance with subregulation (4), that the services provider or

contractor is able to apply when performing the contract, but only where it is necessary for the performance of that contract;

- (i) a statement of the services provider's or contractor's average annual number of staff and managerial staff over the previous 3 years;
- (j) a statement of the tools, plant and technical equipment available to the services provider or contractor for performing the contract;
- (k) a statement of any proportion of the contract which the services provider intends to sub-contract to another person;
- (l) any samples, descriptions and photographs of the goods to be purchased or hired under the public supply contract and certification of the authenticity of such samples, descriptions or photographs;
- (m) certification by official quality control institutes or agencies of recognised competence, attesting that the goods to be purchased or hired under the public supply contract conform to standards and technical specifications (within the meaning of regulation 9(1)) identified by the contracting authority;
- (n) a certificate—
 - (i) attesting conformity to quality assurance standards based on the relevant European standard; and
 - (ii) from an independent body established in any relevant State conforming to the European standard concerning certification; or
- (o) any other evidence of conformity to quality assurance measures which are equivalent to the standards referred to in paragraph (n)(i).

(3) Where appropriate—

- (a) an economic operator or a group of economic operators as referred to in regulation 28 may rely on the capacities of other entities or participants in the group, regardless of the legal nature of the link between the economic operator or group of economic operators and the other entities; and

- (b) the economic operator or the group of economic operators shall prove to the contracting authority that the resources necessary to perform the contract will be available and the contracting authority may, in particular, require the economic operator to provide an undertaking from the other entities to that effect.

(4) The evidence referred to in subregulation (2)(h) is–

- (a) a certificate–
 - (i) attesting conformity to environmental management standards based on–
 - (aa) the Community Eco-Management and Audit Scheme⁽²⁾; or
 - (bb) the relevant European or international standards; and
 - (ii) from an independent body established in any relevant State conforming to EU law or the relevant European or international standards concerning certification; or
- (b) any other evidence of environmental management measures which are equivalent to the standards referred to in paragraph (a)(i).

(5) A contracting authority which requires information to be provided in accordance with subregulation (2) shall specify in the contract notice or in the invitation to tender the information which the economic operator must provide.

Supplementary information.

26. Subject to regulation 27, the contracting authority may require an economic operator to provide information supplementing the information provided in accordance with regulations 23, 24 or 25 or to clarify that information, provided that the information so required relates to the matters specified in regulations 23, 24 or 25.

Official lists of approved economic operators.

⁽²⁾The Community Eco-Management and Audit Scheme (EMAS) is a management tool for companies and other organisations to evaluate, report and improve their environmental performance; for more information see www.europa.eu.int/comm/environment/emas/index-en.htm.

27.(1) This regulation applies where an economic operator is registered in accordance with subregulation (2) or certified in accordance with subregulation (3).

(2) An economic operator is registered in accordance with this subregulation where it is registered on the official list of approved contractors, services providers or suppliers in Gibraltar or in a relevant State which maintains such lists and in which the economic operator is established.

(3) An economic operator is certified in accordance with this subregulation where it is certified by a certification body complying with European certification standards in Gibraltar or in a relevant State which maintains such certification and in which the economic operator is established.

(4) Where an economic operator which is registered or certified submits to the contracting authority–

- (a) a certificate of registration issued by the authority administering the official list referred to in subregulation (2); or
- (b) a certificate issued by the body administering the certification referred to in subregulation (3),

which specifies the information submitted to that authority or body which enabled the economic operator to be registered or certified and which states the classification given, the contracting authority shall accept the certificate as evidence of the matters referred to in subregulation (5).

(5) Subject to subregulation (6), where the certificate referred to in subregulation (4) deals with the grounds referred to in regulations 23(1), (4)(a) to (e), (h) and (j), 24(1)(b)(ii) and (iii) and–

- (a) in the case of a contractor, regulation 25(2)(b), (d), (g), (i) and (j);
- (b) in the case of a services provider, regulation 25(2)(c), (e), (f), (g), (h), (i), (j) and (k); or
- (c) in the case of a supplier, regulation 25(2)(c), (d), (e), (f), (l) and (m),

the contracting authority shall–

- (i) accept the certificate as evidence that the economic operator does not fall within the grounds specified in regulation 23(1), (4)(a) to (e), (h) and (j) and shall not be entitled to require the economic operator to submit such information relating to those grounds as is specified in regulation 23;
- (ii) not be entitled to require the economic operator to provide information specified in regulation 24(1)(b)(ii) and (iii) and—
 - (aa) in the case of a contractor, regulation 25(2)(b), (d), (g), (i) and (j);
 - (bb) in the case of a services provider, regulation 25(2)(c), (e), (f), (g), (h), (i), (j) and (k); and
 - (cc) in the case of a supplier, regulation 25(2)(c), (d), (e), (f), (l) and (m); and
- (iii) not be entitled to seek any supplementary information in accordance with regulation 26 in relation to the matters specified in paragraphs (c)(i) and (ii).

(6) A contracting authority is not required to comply with subregulation (5) where it considers that it has justification for not doing so.

(7) A contracting authority shall—

- (a) not oblige an economic operator from a Member State to comply with subregulation (5) in order to participate in a public contract;
- (b) recognise equivalent certificates from bodies established in Member States; and
- (c) accept other equivalent means of proof.

Consortia.

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

(2) Subject to subregulation (3), a contracting authority shall not treat the tender of a consortium as ineligible nor decide not to include a consortium

amongst those economic operators from which it will make the selection of economic operators to be invited to tender for or to negotiate a public contract or to be admitted to a dynamic purchasing system on the grounds that the consortium has not formed a legal entity for the purposes of tendering for or negotiating the contract or being admitted to a dynamic purchasing system.

(3) Where a contracting authority awards a public 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.

(4) In these Regulations references to an economic operator where the economic operator is a consortium includes a reference to each person who is a member of that consortium.

Corporations.

29.(1) A contracting authority shall not treat the tender of a services provider as ineligible nor decide not to include a services provider amongst those services providers from which it will make the selection of services providers to be invited to tender for or to negotiate a contract or to be admitted to a dynamic purchasing system solely on the ground that under the law of Gibraltar the services provider is required to be an individual, a corporation or other type of body, if under the law of the relevant State in which the services provider is established, that services provider is authorised to provide such services.

(2) In the case of—

- (a) a public services contract;
- (b) a public works contract; or
- (c) a public supply contract covering additional services or siting and installation operations,

a contracting authority may require an economic operator which is not an individual to indicate in the tender, the indicative tender or in the request to be selected to tender for or to negotiate the contract, the names and relevant professional qualifications of the staff who will be responsible for the performance of the contract.

Notifications.

30.(1) Where a contracting authority decides, prior to the stage at which it makes a decision to which regulation 33(1) (award decision) applies, to exclude an applicant, the contracting authority shall notify the applicant of that exclusion.

(2) In this regulation, “applicant” means an economic operator which submitted an offer, applied to be included amongst the economic operators to be selected to tender for or to negotiate the contract, or applied to be a party to the framework agreement.

(3) For the purposes of this regulation, an applicant is excluded if, and only if—

- (a) the applicant, or the applicant's tender, is excluded as mentioned in regulation 15(11), 16(7), 17(9) or 18(10); or
- (b) the applicant is not among those selected to be—
 - (i) invited to tender as mentioned in regulation 16(8);
 - (ii) invited to negotiate, as mentioned in regulation 17(10) or (23), or for the purposes of regulation 17(22); or
 - (iii) invited to participate, as mentioned in regulation 18(11) or (23), or for the purposes of regulation 18(22).

PART 5

THE AWARD OF A PUBLIC CONTRACT

Criteria for the award of a public contract.

31.(1) Subject to regulation 18(27) and to subregulations (6) and (9) of this regulation, a contracting authority shall award a public contract on the basis of the offer which—

- (a) is the most economically advantageous from the point of view of the contracting authority; or
- (b) offers the lowest price.

(2) A contracting authority shall use criteria linked to the subject matter of the contract to determine that an offer is the most economically advantageous including quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, cost

effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.

(3) Where a contracting authority intends to award a public contract on the basis of the offer which is the most economically advantageous it shall state the weighting which it gives to each of the criteria chosen in the contract notice or in the contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(4) When stating the weightings referred to in subregulation (3), a contracting authority may give the weightings a range and specify a minimum and maximum weighting where it considers it appropriate in view of the subject matter of the contract.

(5) Where, in the opinion of the contracting authority, it is not possible to provide weightings for the criteria referred to in subregulation (3) on objective grounds, the contracting authority shall indicate the criteria in descending order of importance in the contract notice or contract documents or, in the case of a competitive dialogue procedure, in the descriptive document.

(6) If an offer for a public contract is abnormally low the contracting authority may reject that offer but only if it has—

- (a) requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low;
- (b) taken account of the evidence provided in response to a request in writing; and
- (c) subsequently verified the offer or parts of the offer being abnormally low with the economic operator.

(7) Where a contracting authority requests an explanation in accordance with subregulation (6), the information requested may, in particular, include—

- (a) the economics of the method of construction, the economics of the manufacturing process or the services provided;
- (b) the technical solutions suggested by the economic operator or any exceptionally favourable conditions available to the economic operator or both for the execution of the work or works, for the supply of goods or for the provision of the services;

- (c) the originality of the work, works, goods or services proposed by the economic operator;
- (d) compliance with the provisions relating to employment protection and working conditions in force at the place where the contract is to be performed; or
- (e) the possibility of the economic operator obtaining State aid.

(8) Where a contracting authority establishes that a tender is abnormally low because the economic operator has obtained State aid, the offer may be rejected on that ground alone only after-

- (a) consultation with the economic operator; and
- (b) the economic operator is unable to prove, within a reasonable time limit fixed by the contracting authority, that the aid was granted in a way which is compatible with the TFEU.

(9) Where a contracting authority rejects an abnormally low offer in accordance with subregulation (8), it shall send a report justifying the rejection to the Minister for onward transmission to the Commission.

(10) In this regulation “offer” includes a bid by one part of a contracting authority to provide services, to carry out work or works or to make goods available to another part of the contracting authority when the former part is invited by the latter part to compete with the offers sought from other persons.

Contract award notice.

32.(1) Subject to subregulations (2) and (3), a contracting authority which has awarded a public contract or concluded a framework agreement shall, not later than 48 days after the award or conclusion, send to the Official Journal a notice, in the form of the contract award notice in Annex III to Commission Regulation (EU) No 842/2011 including the information therein specified.

(2) Any of the information specified in the form of the contract award notice in Annex III to Commission Regulation (EU) No 842/2011 to be included in the contract award notice may be omitted in a particular case where to publish such information—

- (a) would impede law enforcement;

- (b) would otherwise be contrary to the public interest;
- (c) would harm the legitimate commercial interest of any person;
or
- (d) might prejudice fair competition between economic operators.

(3) A contracting authority shall not be required to send a contract award notice in accordance with subregulation (1) where it awards a contract under a framework agreement which has been concluded in accordance with regulation 19.

(4) A contracting authority which has awarded a contract under a dynamic purchasing system in accordance with regulation 20 May—

- (a) send the contract award notice in accordance with subregulation (1); or
- (b) retain any notice it is proposing to send to the Official Journal in accordance with subregulation (1) for a period of 3 months from the date that the first notice was retained.

(5) Where a contracting authority retains contract award notices in accordance with subregulation (4)(b), it shall send those contract award notices to the Official Journal not later than 48 days after the end of each period of 3 months.

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

Information about contract award procedures.

33.(1) Subject to subregulation (13), a contracting authority shall, as soon as possible after the decision has been made, inform the tenderers and candidates of its decision to—

- (a) award of the contract; or
- (b) the conclusion of the framework agreement,

and shall do so by notice in writing by the most rapid means of communication practicable.

(2) Where it is to be sent to a tenderer, the notice referred to in subregulation (1) shall include—

- (a) the criteria for the award of the contract;
- (b) the reasons for the decision, including the characteristics and relative advantages of the successful tender, the score (if any) obtained by—
 - (i) the economic operator which is to receive the notice; and
 - (ii) the economic operator—
 - (aa) to be awarded the contract; or
 - (bb) to become a party to the framework agreement,

and anything required by subregulation (8);

- (c) the name of the economic operator—
 - (i) to be awarded the contract; or
 - (ii) to become a party to the framework agreement; and
- (d) a precise statement of either—
 - (i) when, in accordance with regulation 34, the standstill period is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
 - (ii) the date before which the contracting authority will not, in conformity with regulation 34, enter into the contract or conclude the framework agreement.

(3) Where it is to be sent to a candidate, the notice referred to in subregulation (1) shall include—

- (a) the reasons why the candidate was unsuccessful; and
- (b) the information mentioned in subregulation (2), but as if the words “and relative advantages” were omitted from paragraph (b).

(4) Where the contract or framework agreement is permitted by these Regulations to be awarded or concluded without prior publication of a

contract notice, the contracting authority need not comply with subregulation (1).

(5) Where the only tenderer is the one who is to be awarded the contract or who is to become a party to the framework agreement, and there are no candidates, the contracting authority need not comply with subregulation (1).

(6) Where a contracting authority awards a contract under a framework agreement, or a dynamic purchasing agreement, that contracting authority need not comply with subregulations (1) to (3).

(7) Except to the extent that the contracting authority has already informed the economic operator (whether by notice under subregulation (1) or otherwise), and subject to subregulation (11), a contracting authority shall within 15 days of the date on which it receives a request in writing from any economic operator which was unsuccessful (whether in accordance with regulation 15(11), 16(7), 16(8), 17(9), 17(10), 17 (22), 17 (23), 18(10), 18(11), 18 (22), 18(23), 19 (9), 20(8), 20 (14) or 31)–

- (a) inform that economic operator of the reasons why it was unsuccessful; and
- (b) if the economic operator submitted an admissible tender, the contracting authority shall inform that economic operator of the characteristics and relative advantages of the successful tender and–
 - (i) the name of the economic operator to be awarded the contract;
 - (ii) the names of the parties to the framework agreement; or
 - (iii) the names of the economic operators admitted to the dynamic purchasing system.

(8) The reasons referred to in subregulations (2)(b) and (7)(a) shall include any reason for the contracting authority's decision that the economic operator did not meet the technical specifications–

- (a) as specified in regulation 9(6) by an equivalent means; or
- (b) in terms of the performance or functional requirements in regulation 9(7) by an equivalent means.

(9) Subject to subregulation (11), a contracting authority shall as soon as possible after the decision has been made, inform any candidates and tenderers of its decision to abandon or to recommence a contract award procedure in respect of which a contract notice has been published, in relation to—

- (a) the award of a contract;
- (b) the conclusion of a framework agreement; or
- (c) admittance to a dynamic purchasing system.

(10) A contracting authority which informs an economic operator of its decision in accordance with subregulation (9) shall—

- (a) include the reasons for the decision; and
- (b) provide the decision and reasons in writing if requested by the economic operator.

(11) A contracting authority may withhold any information to be provided in accordance with subregulation (1), (7) or (9) where the disclosure of such information—

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would prejudice the legitimate commercial interests of any economic operator; or
- (d) might prejudice fair competition between economic operators.

(12) A contracting authority shall prepare a record in relation to each public contract awarded by it, framework agreement concluded by it or dynamic purchasing system established by it, specifying—

- (a) the name and address of the contracting authority;
- (b) the value of the consideration to be given under the contract, framework agreement or dynamic purchasing system and—
 - (i) the type of goods purchased or hired;
 - (ii) the work or works to be carried out; or

- (iii) the services to be provided;
- (c) where offers were evaluated in accordance with regulation 31, the names of the economic operators which submitted those offers and where the contracting authority has used the restricted procedure or negotiated procedure, the reasons why those economic operators were selected;
- (d) the name of any economic operator—
 - (i) to which the contract was awarded;
 - (ii) with which the framework agreement was concluded; or
 - (iii) which was admitted to the dynamic purchasing system,and the reasons for having—
 - (aa) awarded the contract to, or concluded the framework agreement with, that economic operator; or
 - (bb) admitted that economic operator to the dynamic purchasing system;
- (e) the names of the economic operators which were unsuccessful in the circumstances referred to in regulation 15(11), 16(7), 16(8), 17(9), 17(10), 18(10), 18(11), 20(8) or 31 and the reasons why they were unsuccessful;
- (f) if known to the contracting authority, the parts of the contract or framework agreement that the economic operator to which the contract has been awarded, or with which the framework agreement has been concluded, intends to sub-contract to another economic operator;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in regulation 13 or 14 constituted grounds for using that procedure;
- (h) in the case of a contracting authority which used the competitive dialogue procedure, details of the circumstances which constituted grounds for using that procedure in accordance with regulation 18(2); and

- (i) where a contracting authority has abandoned a contract award procedure, the conclusion of a framework agreement or the establishment of a dynamic purchasing system, the reasons why the contracting authority has decided not to award the contract, to conclude the framework agreement or to establish the dynamic purchasing system as the case may be.

(13) A contracting authority shall keep appropriate information to document the progress of contract award procedures conducted by electronic means.

(14) If the Commission requests a report containing the information specified in subregulation (12), the contracting authority shall send a written report containing that information, or the main features of it, to the Minister for onward transmission to the Commission.

(15) For the purposes of this regulation—

- (a) “candidate” means an economic operator (other than a tenderer) which applied—
 - (i) to be included amongst the economic operators to be selected to tender or to negotiate the contract; or
 - (ii) to be a party to the framework agreement,

but does not include any economic operator which has been informed of the rejection of its application, and the reasons for it; and

- (b) “tenderer” means an economic operator which submitted an offer and has not been definitively excluded.

(16) For the purposes of subregulation (15)(b)—

- (a) a tenderer has been excluded if its offer has been excluded from consideration; and
- (b) an exclusion is definitive if, and only if, the tenderer has been notified of the exclusion and either—
 - (i) the exclusion has been held to be lawful in proceedings under Part 9; or
 - (ii) the time limit for starting such proceedings has expired even on the assumption that the Court would have

granted the maximum extension permitted by regulation 52 (4) and (5).

Standstill period.

34.(1) Where regulation 33(1) applies, the contracting authority must not enter into the contract or conclude the framework agreement before the end of the standstill period.

(2) Subject to subregulation (6), where the contracting authority sends a regulation 33(1) notice to all the relevant economic operators by facsimile or electronic means, the standstill period ends at midnight at the end of the 10th day after the relevant sending date.

(3) Subject to subregulation (6), where the contracting authority sends a regulation 33(1) notice to all the relevant economic operators only by other means, the standstill period ends at whichever of the following occurs first—

- (a) midnight at the end of the 15th day after the relevant sending date;
- (b) midnight at the end of 10th day after the date on which the last of the economic operators to receive such a notice receives it.

(4) In subregulations (2) and (3), "the relevant sending date" means the date on which the regulation 33(1) notices are sent to the relevant economic operators, and if the notices are sent to different relevant economic operators on different dates, the relevant sending date is the date on which the last of the notices is sent.

(5) Subject to subregulation (6), where the contracting authority sends a regulation 33(1) notice to one or more of the relevant economic operators by facsimile or electronic means and to the others by other means, the standstill period ends at whichever of the following two times occurs latest—

- (a) midnight at the end of the 10th day after the date on which the last notice is sent by facsimile or electronic means;
- (b) the time when whichever of the following occurs first—
 - (i) midnight at the end of the 15th day after the date on which the last notice is sent by other means;
 - (ii) midnight at the end of the 10th day after the date on which the last of the economic operators to receive a notice sent by any such other means receives it.

(6) Where the last day of the standstill period reckoned in accordance with subregulations (2) to (5) is not a working day, the standstill period is extended to midnight at the end of the next working day.

(7) In this regulation—

“regulation 33(1) notice” means a notice given in accordance with regulation 33(1); and

“relevant economic operators” means economic operators to which regulation 33(1) requires information to be given.

PART 6

SPECIALISED CONTRACTS

Design contests.

35.(1) A contracting authority which organises a design contest shall—

- (a) establish the rules for that design contest in accordance with the provisions of this regulation; and
- (b) not limit the admission of any economic operator to the design contest by reference to the territory, or part of the territory of a relevant State, in which it is established.

(2) This regulation shall apply to a design contest if it is organised as part of a procedure leading to the award of a public services contract whose estimated value (including the value of any prizes or payments to participate) is not less than the relevant threshold described in subregulations (4) and (5).

(3) This regulation shall apply to a design contest whether or not it is organised as part of a procedure leading to the award of a public services contract if the aggregate value of the prizes or payments for the contest, including the estimated value of the contract which might subsequently be awarded in accordance with regulation 14(1)(c) (provided that the contracting authority does not exclude such an award), is not less than the relevant threshold described in subregulations (4) and (5).

(4) Subject to subregulation (5), the relevant threshold for the purposes of subregulations (2) and (3) is—

- (a) the sum mentioned in Article 67(1)(a) of the Public Sector Directive where offers are sought by a contracting authority within the meaning of regulation 3(1); or
- (b) the sum mentioned in Article 67(1)(b) of the Public Sector Directive where offers are sought by any other contracting authority.

(5) For the purposes of subregulations (2) and (3), the relevant threshold is the sum mentioned in Article 67(1)(c) of the Public Sector Directive in the case of a public services contract which is–

- (a) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1, 64228200-2 within category 5 of Part A of Schedule 2;
- (b) for research and development services specified in category 8 or Part A of Schedule 2; or
- (c) a Part B services contract.

(6) This regulation shall not apply to a design contest–

- (a) where the contracting authority is a utility within the meaning of regulation 3 of the Procurement (Utilities Contracts) Regulations 2012 and that contract is for the purposes of carrying out an activity specified in any Part of Schedule 1 to those Regulations in which the utility is specified;
- (b) where the principal purpose is to permit the contracting authority to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services;
- (c) which is classified as secret or where it must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of Gibraltar or when the protection of the essential interests of the security of the Gibraltar requires it;
- (d) where different rules govern the procedures of the design contest and it is to be entered into in accordance with–
 - (i) an international agreement applicable to Gibraltar with a State which is not a relevant State and it relates to a

design contest intended for the joint implementation or exploitation of a project related to that agreement;

- (ii) an international agreement relating to the stationing of troops; or
- (iii) the design contest procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members; or

(e) which is otherwise excluded from the scope of these Regulations.

(7) The contracting authority shall publicise its intention to hold a design contest by sending to the Official Journal a notice in the form of the design contest notice in Annex XII to Commission Regulation (EU) No 842/2011, and containing the information therein specified.

(8) The contracting authority shall make the rules of the design contest available to economic operators which wish to participate in the contest.

(9) Regulations 28(2) and 29 apply to design contests as they apply to the seeking of offers in relation to a proposed public contract.

(10) Regulation 44 (1)(b) to (8) applies to notices relating to design contests as they apply to notices in relation to a proposed public contract.

(11) Regulation 46 (1), (2) and (4) applies to all communications relating to design contests as they apply to a proposed public contract.

(12) The contracting authority shall ensure that the specified means of communication and the storage of information enables—

- (a) the integrity and confidentiality of information provided by participants in the design contest to be maintained; and
- (b) the jury to ascertain the contents of proposals only after the time limit for their submission has expired.

(13) Where the contracting authority requires that proposals are to be received by electronic means, it shall ensure that—

- (a) details of the equipment which is necessary for the electronic receipt of proposals, including encryption, are available to all

economic operators which wish to participate in the design contest; and

- (b) the equipment for the electronic receipt of proposals complies with the requirements of regulation 46 (6).

(14) Where the contracting authority restricts the number of participants in the design contest, it shall—

- (a) establish clear and non-discriminatory criteria to select those participants; and
- (b) ensure that the number of participants selected is sufficient to ensure adequate competition.

(15) A contracting authority shall ensure that—

- (a) the members of the jury are all individuals who are independent of participants in the design contest;
- (b) where 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;
- (c) the participants' proposals are submitted to the jury without any indication as to the authorship of each proposal;
- (d) the jury makes its decisions or opinions independently and solely on the basis of the criteria specified in the notice referred to in subregulation (7);
- (e) the jury is not informed of the authorship of any proposal until after it has reached its decision or opinion;
- (f) the jury prepares minutes signed by its members in which it records—
 - (i) its ranking of the proposals based upon its assessment of each proposal's merits; and
 - (ii) its observations or details of any issues upon which clarification is required in relation to each proposal; and
- (g) the jury may invite the participants to answer any questions to clarify issues noted in the minutes referred to in paragraph (f)

and shall record complete minutes of any such communications with participants.

(16) The contracting authority shall, not later than 48 days after the date the jury makes its selection, publicise the results of the design contest by sending to the Official Journal a notice in the form of the notice of the results of a design contest in Annex XIII to Commission Regulation (EU) No 842/2011 and containing the information therein specified.

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

(18) Any of the information specified in the form of the notice referred to in subregulation (16) to be included in that notice may be omitted in a particular case where to publish such information—

- (a) would impede law enforcement;
- (b) would otherwise be contrary to the public interest;
- (c) would harm the legitimate commercial interest of any person;
or
- (d) might prejudice fair competition between economic operators.

Subsidised public works contracts and public services contracts.

36.(1) Where—

- (a) a contracting authority undertakes to contribute more than half of the consideration to be or expected to be paid under a contract to which this subregulation applies by virtue of subregulation (2); and
- (b) the contract has been or is to be entered into by a person other than another contracting authority (in this regulation referred to as “the subsidised body”), that contracting authority shall—
 - (i) make it a condition of the making of such a contribution that the subsidised body complies with the provisions of these Regulations in relation to that contract as if it were a contracting authority; and
 - (ii) ensure that the subsidised body does so comply or recover the contribution.

(2) Subregulation (1) applies to a contract which, if the subsidised body were a contracting authority, would be—

- (a) a public works contract to which these Regulations apply by virtue of regulation 8 and which is for the carrying out of—
 - (i) any of the civil engineering activities specified in Schedule 1;
 - (ii) building work for hospitals, facilities intended for sports, recreation and leisure, school and university building or buildings for administrative purposes; or
- (b) a public services contract to which these Regulations apply by virtue of regulation 8 for providing services in connection with a contract referred to in paragraph (a).

Subsidised housing scheme works contracts.

37.(1) For the purpose of seeking offers in relation to the design and construction of a subsidised housing scheme works contract to which the circumstances of subregulation (2) apply, a contracting authority may, except as indicated in the following subregulations, depart from the provisions of these Regulations insofar as it is necessary to do so to select the contractor which is most suitable for integration into the team referred to in subregulation (2).

(2) The circumstances referred to in subregulation (1) are where the size and complexity of the scheme and the estimated duration of the works involved require that the planning of the scheme be based from the outset on a close collaboration of a team comprising representatives of the contracting authority, experts and the contractor.

(3) The contracting authority shall comply with the provisions of—

- (a) regulations 4(3), 11, 32, 33, 44 and 46; and
- (b) the time limits referred to in regulations 15, 16, 17 and 18.

(4) The contracting authority shall include in the contract notice a job description which is as accurate as possible so as to enable contractors to form a valid idea of the scheme and of the minimum standards relating to the business or professional status, the economic and financial standing, the technical ability and any quality assurance standards which the contractor awarded the contract will be expected to fulfil in accordance with regulations 23, 24, 25 and 26.

Works concession contracts.

38.(1) A contracting authority seeking offers in relation to a works concession contract shall comply with this regulation.

(2) These Regulations do not apply to the seeking of offers in relation to a proposed works concession contract where the estimated value of the contract at the relevant time is less than the sum mentioned in the first paragraph of Article 56 of the Public Sector Directive.

(3) In this regulation “relevant time” has the same meaning it has in regulation 8(20).

(4) The estimated value of a works concession contract for the purposes of subregulation (2) shall be the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not propose to grant a concession.

(5) The value of the consideration under a works concession contract shall be calculated in accordance with regulation 8(6).

(6) These Regulations shall not apply to the seeking of offers in relation to a proposed works concession contract—

- (a) where—
 - (i) the contracting authority is a utility within the meaning of regulation 3 of the Procurement (Utilities Contracts) Regulations 2012; and
 - (ii) the work or works to be carried out under it are for the purposes of carrying out an activity specified in any Part of Schedule 1 to those Regulations in which the utility is specified;
- (b) where the principal purpose of the contract is to permit the contracting authority to provide or exploit public telecommunications networks or to provide to the public one or more telecommunications services;
- (c) which is classified as secret or where the performance of the contract must be accompanied by special security measures in accordance with the laws, regulations of administrative provisions of Gibraltar or when the protection of the essential interests of the security of the Gibraltar require it;

- (d) where Article 346 of the TFEU applies to that works concession contract;
- (e) where different procedures govern the procedures leading to the award of the contract and it is to be entered into in accordance with—
 - (i) an international agreement concluded in conformity with the TFEU applicable to Gibraltar with a State which is not a relevant State and it relates to the carrying out of works intended for the joint implementation or exploitation of a project related to that agreement;
 - (ii) an international agreement relating to the stationing of troops and concerning undertakings in Gibraltar or in a relevant State; or
 - (iii) the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members; or
- (f) subject to subregulation (7), when a contracting authority wants an economic operator which has entered into a works concession contract with the contracting authority to carry out additional work or works which were not included in the project initially considered or in the original works concession contract but which through unforeseen circumstances have become necessary, and such work or works—
 - (i) cannot for technical or economic reasons be carried out separately from those under the original contract without major inconvenience to the contracting authority; or
 - (ii) can be carried out separately from those under the original contract but are strictly necessary to the later stages of the performance of that contract.

(7) Subregulation (6)(f) shall not apply where the aggregate value of the consideration to be given under contracts for the additional work or works exceeds 50% of the value of the consideration payable under the original contract.

(8) The contracting authority shall—

- (a) publicise its intention to seek offers in relation to the works concession contract by sending to the Official Journal as soon as possible after forming the intention a notice in the form of the works concession contract notice in Annex X to Commission Regulation (EU) No 842/2011, and containing the information therein specified and any other information which the contracting authority considers useful; and
- (b) comply with regulation 44 in relation to a works concession contract notice as it would comply in relation to a proposed public contract.

(9) Subject to subregulations (10) and (13), the date which the contracting authority fixes as the last date for the receipt by it of tenders or of requests to be selected to tender for or to negotiate the contract, shall be specified in the contract notice and shall be not less than 52 days from the date of despatch of the notice.

(10) Where the contracting authority has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limit referred to in subregulation (9) may be reduced by 7 days.

(11) The contracting authority shall send the contract documents to an economic operator within 6 days of the receipt of a request from that economic operator provided that the documents are requested in good time and any fee specified in the contract notice has accompanied the request.

(12) The contracting authority shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator if the request is received in sufficient time to enable the contracting authority to supply the information not later than 6 days before the date specified in the contract notice as the final date for the receipt by it of tenders.

(13) The contracting authority shall extend the time limit for the receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the contracting authority to respond in accordance with subregulations (11) and (12) and, for whatever reason, the contract documents are not supplied in accordance with those subregulations; or

- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

Sub-contracting the work or works to be carried out under a works concession contract.

39.(1) A contracting authority seeking offers in relation to a works concession contract shall either—

- (a) include in the invitation to tender for, to apply to be selected to tender for or to negotiate, the concession contract, a request that the economic operator specify whether it would intend, if awarded the concession contract, to sub-contract to economic operators which are not related to it—
 - (i) any of the work or works to be carried out under the contract; and
 - (ii) where paragraph (a)(i) applies, how much as a proportion of the value of such work or works would be so sub-contracted; or
- (b) require as a term of the works concession contract—
 - (i) that the concessionaire sub-contract to economic operators which are not related to the concessionaire some or all of the work or works to be carried out under the concession contract; and
 - (ii) that the amount of the work or works so sub-contracted be not less than 30%, or such higher percentage as may be specified in the contract at the option of the contracting authority or the concessionaire, of the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not grant a concession.

(2) Where the concessionaire is a contracting authority, that contracting authority shall comply with the provisions of these Regulations in respect of any public works contract it seeks offers for the purpose of sub-contracting the work or works to be carried out under the works concession contract.

(3) Where the concessionaire is not a contracting authority, the concessionaire shall—

- (a) publicise its intention to seek offers in relation to any contract to which this subregulation applies by virtue of subregulation (4) by sending to the Official Journal as soon as possible after forming the intention, a notice in the form of the contract notice for contracts to be awarded by a concessionaire in Annex XI to Commission Regulation (EU) No 842/2011, and containing the information therein specified and any other information which the concessionaire considers useful;
 - (b) comply with regulation 44 in relation to that contract notice as if the concessionaire were a contracting authority; and
 - (c) subject to subregulations (5), (6) and (9)–
 - (i) if that contract notice invites tenders, fix as the last date for the receipt by the concessionaire of tenders a date of not less than 40 days from the date of the despatch of the notice and specify that date in that notice; or
 - (ii) if that contract notice invites applications to be selected to tender for or negotiate the contract–
 - (aa) fix as the last date for the receipt of those applications a date not less than 37 days from the date of despatch of the notice and specify that date in that notice; and
 - (bb) fix as the last date for the receipt by it of tenders following selection of the economic operators to be invited to tender a date of not less than 40 days from the date of despatch of the invitation and specify that date in the invitation.
- (4) Subregulation (3) applies to a contract–
- (a) in relation to which the concessionaire is seeking offers for the purpose of sub-contracting any of the work or works to be carried out under the works concession contract;
 - (b) which the concessionaire does not intend to enter into with an economic operator who is–
 - (i) a member of the group of economic operators which acted jointly for the purpose of obtaining the works concession contract; or

(ii) related to it or to any member of that group; and

(c) which would, if the concessionaire were a contracting authority, be a public works contract, other than a public works contract—

(i) in respect of which a contracting authority would be entitled to use the negotiated procedure in accordance with regulation 14; or

(ii) which is excluded from the application of these Regulations by regulation 6 or 8.

(5) Where the concessionaire has transmitted a contract notice by electronic means in accordance with the format and procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive, the time limits referred to in subregulation (3)(c) may be reduced by 7 days.

(6) The concessionaire may reduce the time limits for the receipt by it of tenders by 5 days where—

(a) the concessionaire offers unrestricted and full direct access by electronic means to the contract documents from the date of publication of the contract notice; and

(b) the contract notice specifies the internet address at which the documents referred to in paragraph (a) are available.

(7) The concessionaire shall send the contract documents to an economic operator within 6 days of the receipt of a request from that economic operator provided that the documents are requested in good time and any fee specified in the contract notice has accompanied the request.

(8) The concessionaire shall supply to an economic operator such further information relating to the contract documents as may be reasonably requested by that economic operator provided that the request is received in sufficient time to enable the concessionaire to supply the information not later than 6 days before the date specified in the contract notice as the final date for the receipt by it of tenders.

(9) The concessionaire shall extend the time limit for the receipt by it of tenders in order that all the information necessary for the preparation of a tender is available to all economic operators where—

- (a) an economic operator requests the contract documents in sufficient time to allow the concessionaire to respond in accordance with subregulations (7) and (8) and, for whatever reason, the contract documents are not supplied by that date; or
- (b) it is necessary that the economic operators be given the opportunity to inspect the site or premises or documents relating to the contract documents.

(10) The concessionaire may combine the reduction in the periods of time referred to in subregulations (5) and (6).

(11) In this regulation an economic operator is to be treated as related to another economic operator—

- (a) if one economic operator exercises, directly or indirectly, a dominant influence over the other; or
- (b) if both those economic operators are subject to the dominant influence of another economic operator.

(12) An economic operator shall be taken to exercise a dominant influence over another economic operator within the meaning of subregulation (11)—

- (a) if it possesses the greater part of the issued share capital of that economic operator or controls the voting power attached to such greater part; or
- (b) if it may appoint more than half of the individuals which are ultimately responsible for managing that economic operator's affairs.

(13) A contracting authority shall require applicants for a works concession contract to submit with the application a list of—

- (a) all economic operators which are related to the applicant; and
- (b) all economic operators which are related to the economic operators referred to in paragraph (a),

and to submit an updated list from time to time to take account of any changes in the economic operators referred to in paragraphs (a) and (b).

PART 7
MATTERS RELATING TO A PUBLIC CONTRACT

Obligations relating to taxes, environmental protection, employment protection and working conditions.

40.(1) A contracting authority may include in the contract documents relating to a public works contract or a public services contract, information as to where a contractor or services provider may obtain information about the obligations relating to taxes, environmental protection, employment protection and working conditions which will apply to—

- (a) the work or works to be carried out under the public works contract; or
- (b) the services to be provided under the public services contract.

(2) A contracting authority which provides the information referred to in subregulation (1) shall request contractors or services providers to indicate that they have taken account of the obligations relating to those employment protection provisions and those working conditions in preparing their tender or in negotiating the contract.

(3) Subregulation (2) shall be without prejudice to the application of regulation 31 concerning the examination of abnormally low offers.

Conditions for performance of contracts.

41.(1) A contracting authority may stipulate conditions relating to the performance of a public contract, if those conditions are compatible with EU law and are indicated in—

- (a) the contract notice and in the contract documents; or
- (b) the contract documents.

(2) The conditions referred to in subregulation (1) may include, in particular, social and environmental considerations.

PART 8
MISCELLANEOUS

Statistical and other reports.

42.(1) Subject to regulation 43, a contracting authority shall, not later than 31 July in each year, send to the Minister a report specifying in relation to

each public contract awarded by it or framework agreement concluded by it during the reporting period—

- (a) whether the contract was a public services contract, a public supply contract or a public works contract;
- (b) whether the framework agreement was for the provision of services, for the purchase or hire of goods or for the carrying out of work or works;
- (c) the value (estimated if necessary) of the consideration payable under the contract or framework agreement;
- (d) whether the open procedure, the restricted procedure, the negotiated procedure or the competitive dialogue procedure was used;
- (e) if the negotiated procedure was used, under which provision of regulation 13 or 14 that procedure was used;
- (f) in the case of—
 - (i) a public services contract or a framework agreement for the provision of services, the principal category of service provided or to be provided under the contract or framework agreement according to the nomenclature used in Schedule 2;
 - (ii) a public supply contract or a framework agreement for the purchase or hire of goods, the type of goods purchased or hired or to be purchased or hired under the contract or framework agreement; and
 - (iii) a public works contract or a framework agreement for the carrying out of works, the principal category of works carried out or to be carried out under the contract or framework agreement according to the nomenclature used in Schedule 1; and
- (g) the nationality of any economic operator to which the contract was awarded or the framework agreement was concluded and the place where that economic operator is established.

(2) Subject to regulation 43, a contracting authority shall send to the Minister a report containing such other information as the Government may from time to time require in respect of a particular public contract or

framework agreement (including a public contract or framework agreement which is excluded from the application of these Regulations by regulation 6 or 8) for the purposes of causing the Commission to be informed.

(3) In this regulation “the reporting period” means the year preceding the year in which the reports referred to in subregulation (1) are to be made.

Provision of reports.

43.(1) Where a contracting authority—

- (a) is not a Government Department; and
- (b) is required in accordance with these Regulations to send a report,

it shall send the report to the Minister responsible for that contracting authority.

(2) The Minister responsible for a contracting authority shall be the Minister whose area of responsibility is most closely connected with the functions of the contracting authority.

(3) Any questions as to which Minister’s areas of responsibility are most closely connected with the functions of a contracting authority in accordance with subregulation (2) shall be determined by the Chief Minister whose determination shall be final.

(4) The requirement on a contracting authority to send any report in accordance with subregulation (1) to the Minister responsible for that contracting authority shall be enforceable, on the application of the Minister responsible, to the Supreme Court by mandatory order.

Publication of notices.

44.(1) Any notice required by these Regulations to be sent to the Official Journal shall be—

- (a) in the correct format and contain the necessary information specified by Commission Regulation (EU) No 842/2011 and any other information which the contracting authority considers useful; and
- (b) subject to subregulation (2), sent to the Office for Official Publications of the European Union by electronic means in the format and in accordance with the procedures specified in

paragraph 3 of Annex VIII to the Public Sector Directive, or by other means.

(2) Where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulations 16(6), 16(17) or 17(8), the notice shall be sent by facsimile or by electronic means in the format and in accordance with the procedures referred to in paragraph 3 of Annex VIII to the Public Sector Directive.

(3) Where a notice is not sent by electronic means in accordance with subregulation (1)(b) or (2), it shall not contain more than 650 words.

(4) The contracting authority shall not place a notice in any publication—

- (a) before the date on which the notice is despatched in accordance with subregulation (1)(b) or (2); or
- (b) which contains any additional information to that contained in the notice despatched in accordance with subregulation (1)(b) or (2) or published on the contracting authority's buyer profile in accordance with regulation 11(1).

(5) The contracting authority shall refer to the date of despatch of the notice to the Official Journal where it publishes a notice in the circumstances referred to in subregulation (4).

(6) The contracting authority shall not publish a prior information notice on its buyer profile before the date on which notice of its publication in that form is despatched to the Commission in accordance with regulation 11(3) and the contracting authority shall refer to the date of that despatch on its buyer profile.

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

(8) Where the contracting authority is not required to send a contract notice to the Official Journal in respect of a particular public contract it may nevertheless publish such a notice in accordance with the provisions of this regulation.

Confidentiality of information.

45.(1) Subject to the provisions of these Regulations, a contracting authority shall not disclose information forwarded to it by an economic

operator which the economic operator has reasonably designated as confidential.

(2) In this regulation, confidential information includes technical or trade secrets and the confidential aspects of tenders.

Means of communication.

46.(1) A contracting authority may specify that any communication referred to in these Regulations may be made by—

- (a) post;
- (b) facsimile;
- (c) electronic means in accordance with subregulations (4) and (5);
- (d) telephone in the circumstances referred to in subregulation (8);
or
- (e) a combination of the means of communication referred to in paragraphs (a) to (d).

(2) The means of communication specified by a contracting authority shall be generally available and shall not restrict economic operators' access to the contract award procedures specified in these Regulations.

(3) A contracting authority shall ensure that the specified means of communication and the storage of information enables—

- (a) the integrity of information provided by economic operators and the confidentiality of tenders and requests to be selected to tender for or to negotiate the contract are maintained; and
- (b) tenders and requests to be selected to tender for or to negotiate the contract are only opened after the time limit for their submission has expired.

(4) The equipment used for communications made by electronic means shall be—

- (a) non-discriminatory;
- (b) generally available; and

- (c) interoperable with information and communication technology products in general use.

(5) Where a contracting authority requires that tenders and requests to be selected to tender for or to negotiate the contract are to be received by electronic means, it shall ensure that—

- (a) details of the equipment including any software which is necessary for the electronic receipt of tenders and requests to be selected to tender for or to negotiate the contract, including encryption, are available to all interested economic operators; and
- (b) the equipment for the electronic receipt of tenders and requests to be selected to tender for or to negotiate the contract complies with the requirements of subregulation (6).

(6) The requirements referred to in subregulation (5)(b) are—

- (a) electronic signatures relating to tenders and requests to participate shall comply with the Electronic Commerce Act 2001 and the contracting authority may require that these signatures be accompanied by an advanced electronic signature;
- (b) the exact time and date of the receipt of tenders and requests to participate shall be capable of being determined precisely;
- (c) it may reasonably be considered that—
 - (i) data is not capable of being accessed before the time limits specified by the contracting authority; and
 - (ii) any such unauthorised access is clearly detectable;
- (d) only authorised persons shall set or change the dates for opening data received from economic operators;
- (e) access to any data shall be possible only through simultaneous action by authorised persons and only after the prescribed date; and
- (f) data received and opened in accordance with these requirements must remain accessible only to authorised persons.

(7) A contracting authority may require any documents, certificates and declarations referred to in regulations 23, 24, 25, 26 and 27 which do not exist in electronic format to be submitted before the time limit has expired for the receipt by it of tenders or requests to be selected to tender for or to negotiate the contract.

(8) Requests to be selected to tender for or to negotiate the contract may be made—

- (a) in writing; or
- (b) by telephone.

(9) Where a request to be selected to tender for or to negotiate the contract is made by telephone, an economic operator shall confirm the request in writing before the deadline for receipt of such requests has expired.

(10) Where a request to be selected to tender for or to negotiate the contract is made by facsimile, a contracting authority—

- (a) may require that the request be confirmed by post or by electronic means where this is necessary for the purposes of legal proof; and
- (b) shall specify any requirement for such confirmation and the time limit for sending it in the contract notice.

Sub-contracting.

47. A contracting authority may require an economic operator to indicate in its tender—

- (a) any part of the contract that economic operator intends to sub-contract to any other person; and
- (b) the identity of any person to whom that economic operator proposes to sub-contract any part of the contract.

Public service bodies.

48.(1) Where a contracting authority grants to a person, other than a contracting authority, special or exclusive rights to carry on a service for the benefit of the public, it shall impose an express duty on that person in the terms referred to in subregulation (2).

(2) The duty referred to in subregulation (1) is a duty not to discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds—

- (a) of nationality, against a person who is a national of and established in a relevant State; or
- (b) that the goods to be supplied under the contract originate in a relevant State.

PART 9
APPLICATIONS TO THE COURT

Interpretation of Part 9.

49.(1) In this Part, except where the context otherwise requires—

“contract”, except in regulation 63, means a contract or a framework agreement;

“contracting authority” has the extended meaning given to it by regulation 50 (3);

“Court” means the Supreme Court ;

“declaration of ineffectiveness” means a declaration made under regulation 58 (2)(a) or 63 (3);

“economic operator” has the extended meaning given to it by regulation 50 (3);

“grounds for ineffectiveness” has the meaning given to it by regulation 59;

“proceedings” means court proceedings taken for the purposes of regulation 51; and

“standstill period”, and references to its end, have the same meaning as in regulation 34.

(2) In this Part, any reference to a period of time, however expressed, is to be interpreted subject to the requirement that, if the period would otherwise have ended on a day which is not a working day, the period is to end at the end of the next working day.

Duty owed to economic operators

50.(1) This regulation applies to the obligation on–

- (a) a contracting authority to comply with–
 - (i) the provisions of these Regulations, other than regulations 14(2), 31(9), 33(12), 42 and 43(1) ; and
 - (ii) any enforceable EU obligation in respect of a contract or design contest (other than one excluded from the application of these Regulations by regulation 6, 8 or 35); and
- (b) a concessionaire to comply with the provisions of regulation 39 (3)

(2) That obligation is a duty owed to an economic operator.

(3) Where the duty owed in accordance with this regulation is the obligation on a concessionaire to comply with the provisions of regulation 39(3)–

- (a) references in this Part to a “contracting authority” include, despite regulation 3, the concessionaire; and
- (b) references in this Part to an “economic operator” include, despite regulation 4, any person–
 - (i) who sought, who seeks or would have wished, to be the person to whom a contract to which regulation 39(3) applies is awarded; and
 - (ii) who is a national of a relevant State and established in Gibraltar or in a relevant State.

Enforcement of duties through the Court.

51.(1) A breach of the duty owed in accordance with regulation 50 is actionable by any economic operator which, in consequence, suffers, or risks suffering, loss or damage.

(2) Proceedings for that purpose must be started in the Court and regulations 52 to 62 apply to such proceedings.

General time limits for starting proceedings.

52.(1) This regulation limits the time within which proceedings may be started where the proceedings do not seek a declaration of ineffectiveness.

(2) Subject to subregulations (3) and (5), such proceedings must be started within 30 days beginning with the date when the economic operator first knew or ought to have known that grounds for starting proceedings had arisen.

(3) Subregulation (2) does not require proceedings to be started before the end of any of the following periods–

- (a) where the proceedings relate to a decision which is sent to the economic operator by facsimile or electronic means, 10 days beginning with–
 - (i) the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision,
 - (ii) if the decision is not so accompanied, the day after the date on which the economic operator is informed of a summary of those reasons;
- (b) where the proceedings relate to a decision which is sent to the economic operator by other means, whichever of the following periods ends first–
 - (i) 15 days beginning with the day after the date on which the decision is sent, if the decision is accompanied by a summary of the reasons for the decision,
 - (ii) 10 days beginning with–
 - (aa) the day after the date on which the decision is received, if the decision is accompanied by a summary of the reasons for the decision, or
 - (bb) if the decision is not so accompanied, the day after the date on which the economic operator is informed of a summary of those reasons;
- (c) where paragraphs (a) and (b) do not apply but the decision is published, 10 days beginning with the day on which the decision is published.

(4) Subject to subregulation (5), the Court may extend the time limits imposed by this regulation (but not the limits imposed by regulation 53) where the Court considers that there is a good reason for doing so.

(5) The Court must not exercise its power under subregulation (4) so as to permit proceedings to be started more than 3 months after the date when the economic operator first knew or ought to have known that grounds for starting the proceedings had arisen.

(6) For the purposes of this regulation, proceedings are to be regarded as started only when the claim form is served.

Special time limits for seeking a declaration of ineffectiveness.

53.(1) This regulation limits the time within which proceedings may be started where the proceedings seek a declaration of ineffectiveness.

(2) Such proceedings must be started—

- (a) where subregulation (3) or (5) applies, within 30 days beginning with the relevant date mentioned in that subregulation; and
- (b) in any event, within six months beginning with the day after the date on which the contract was entered into.

(3) This subregulation applies where a relevant contract award notice has been published in the Official Journal, in which case the relevant date is the day after the date on which the notice was published.

(4) For the purposes of subregulation (3), a contract award notice is relevant if, and only if—

- (a) the contract was awarded without the prior publication of a contract notice; and
- (b) the contract award notice includes justification of the decision of the contracting authority to award the contract without the prior publication of a contract notice.

(5) This subregulation applies where the contracting authority has informed the economic operator of—

- (a) the conclusion of the contract; and
- (b) a summary of the relevant reasons,

in which case the relevant date is the day after the date on which the economic operator was informed of the conclusion or, if later, was informed of a summary or the relevant reasons.

(6) In subregulation (5), “the relevant reasons” means the reasons which the economic operator would have been entitled to receive in response to a request under regulation 33(7).

(7) In this regulation, “contract award notice” means a notice in accordance with regulation 32(1).

(8) For the purposes of this regulation, proceedings are to be regarded as started only when the claim form is served.

Starting proceedings.

54.(1) Where proceedings are to be started, the economic operator must serve the claim form on the contracting authority within 7 days after the date of issue.

(2) Subregulation (3) applies where proceedings are started—

- (a) seeking a declaration of ineffectiveness; or
- (b) alleging a breach of regulation 34, 55 or 56(1)(b) where the contract has not been fully performed.

(3) In those circumstances, the economic operator must, as soon as practicable, send a copy of the claim form to each person, other than the contracting authority, who is a party to the contract in question.

(4) The contracting authority must, as soon as practicable, comply with any request from the economic operator for any information that the economic operator may reasonably require for the purpose of complying with subregulation (3).

(5) In this regulation “serve” means serve in accordance with rules of court, and for the purposes of this regulation a claim form is deemed to be served on the day on which it is, or they are, deemed by rules of court to be served.

Contract-making suspended by challenge to award decision.

55.(1) Where—

- (a) a claim form is issued in respect of a contracting authority's decision to award the contract;
- (b) the contracting authority has become aware that the claim form has been issued and that it relates to that decision; and
- (c) the contract has not been entered into,

the contracting authority is required to refrain from entering into the contract.

(2) The requirement continues until any of the following occurs—

- (a) the Court brings the requirement to an end by interim order under regulation 56(1)(a);
- (b) the proceedings at first instance are determined, discontinued or otherwise disposed of and no order has been made continuing the requirement (for example in connection with an appeal or the possibility of an appeal).

(3) This regulation does not affect the obligations imposed by regulation 34.

Interim orders.

56.(1) In proceedings, the Court may, where relevant, make an interim order—

- (a) bringing to an end the requirement imposed by regulation 55(1);
- (b) restoring or modifying that requirement;
- (c) suspending the procedure leading to—
 - (i) the award of the contract; or
 - (ii) the determination of the design contest,

in relation to which the breach of the duty owed in accordance with regulation 50 is alleged;

- (d) suspending the implementation of any decision or action taken by the contracting authority in the course of following such a procedure.

- (2) When deciding whether to make an order under subregulation (1)(a)–
- (a) the Court must consider whether, if regulation 55(1) were not applicable, it would be appropriate to make interim order requiring the contracting authority to refrain from entering into the contract; and
 - (b) only if the Court considers that it would not be appropriate to make such an interim order may it make an order under subregulation (1)(a).
- (3) If the Court considers that it would not be appropriate to make an interim order of the kind mentioned in subregulation (2)(a) in the absence of undertakings or conditions, it may require or impose such undertakings or conditions in relation to the requirement in regulation 55(1).
- (4) The Court may not make an order under subregulation (1)(a) or (b) or (3) before the end of the standstill period.
- (5) This regulation does not prejudice any other powers of the Court.

Remedies where the contract has not been entered into.

57.(1) Subregulation (2) applies where–

- (a) the Court is satisfied that a decision or action taken by a contracting authority was in breach of the duty owed in accordance with regulation 50; and
 - (b) the contract has not yet been entered into.
- (2) In those circumstances, the Court may do one or more of the following–
- (a) order the setting aside of the decision or action concerned;
 - (b) order the contracting authority to amend any document;
 - (c) award damages to an economic operator which has suffered loss or damage as a consequence of the breach.
- (3) This regulation does not prejudice any other powers of the Court.

Remedies where the contract has been entered into.

58.(1) Subregulation (2) applies if–

- (a) the Court is satisfied that a decision or action taken by a contracting authority was in breach of the duty owed in accordance with regulation 50; and
- (b) the contract has already been entered into.

(2) In those circumstances, the Court–

- (a) must, if it is satisfied that any of the grounds for ineffectiveness applies, make a declaration of ineffectiveness in respect of the contract unless regulation 60 requires the Court not to do so;
- (b) must, where required by regulation 62, impose penalties in accordance with that regulation;
- (c) may award damages to an economic operator which has suffered loss or damage as a consequence of the breach, regardless of whether the Court also acts as described in paragraphs (a) and (b);
- (d) must not order any other remedies.

(3) Subregulation (2)(d) is subject to regulation 63(3) and (9) (additional relief in respect of specific contracts where a framework agreement is ineffective) and does not prejudice any power of the Court under regulation 61(3) or 62(11) (orders which supplement a declaration of ineffectiveness or a contract-shortening order).

Grounds for ineffectiveness.

59.(1) There are three grounds for ineffectiveness.

The first ground

(2) Subject to subregulation (3), the first ground applies where the contract has been awarded without the prior publication of a contract notice in any case in which these Regulations required the prior publication of a contract notice.

(3) The first ground does not apply if all the following apply–

- (a) the contracting authority considered the award of the contract without the prior publication of a contract notice to be permitted by these Regulations;

- (b) the contracting authority has had published in the Official Journal a voluntary transparency notice expressing its intention to enter into the contract; and
 - (c) the contract has not been entered into before the end of a period of at least 10 days beginning with the day after the date on which the voluntary transparency notice was published in the Official Journal.
- (4) In subregulation (3), “voluntary transparency notice” means a notice–
- (a) which contains the following information–
 - (i) the name and contact details of the contracting authority,
 - (ii) a description of the object of the contract,
 - (iii) a justification of the decision of the contracting authority to award the contract without the prior publication of a contract notice,
 - (iv) the name and contact details of the economic operator to be awarded the contract, and
 - (v) where appropriate, any other information which the contracting authority considers it useful to include; and
 - (b) which, if Commission Regulation (EU) No 842/2011 sets out a form to be used for the purposes of subregulation (3), is in that form.

The second ground

- (5) The second ground applies where all the following apply–
- (a) the contract has been entered into in breach of any requirement imposed by–
 - (i) regulation 34 (the standstill period),
 - (ii) regulation 55 (contract-making suspended by challenge to award), or
 - (iv) regulation 56(1)(b) (interim order restoring or modifying a suspension originally imposed by regulation 55);

- (b) there has also been a breach of the duty owed to the economic operator in accordance with regulation 50 in respect of obligations other than those imposed by regulation 34 (the standstill period) and this Part;
- (c) the breach mentioned in paragraph (a) has deprived the economic operator of the possibility of starting proceedings in respect of the breach mentioned in paragraph (b), or pursuing them to a proper conclusion, before the contract was entered into; and
- (d) the breach mentioned in paragraph (b) has affected the chances of the economic operator obtaining the contract.

The third ground

(6) Subject to subregulation (7), the third ground applies where all the following apply–

- (a) the contract is based on a framework agreement or was awarded under a dynamic purchasing system;
- (b) the contract was awarded in breach of any requirement imposed by–
 - (i) regulation 19(7)(b), (8), and (9) (award of particular contracts under framework agreements through re-opening of competition); or
 - (ii) regulation 20(11) to (14) (award of contracts under the dynamic purchasing systems); and
- (c) the estimated value of the contract is equal to or exceeds the relevant threshold for the purposes of regulation 8.

(7) The third ground does not apply if all the following apply–

- (a) the contracting authority considered the award of the contract to be in accordance with the provisions mentioned in subregulation (6)(b);
- (b) the contracting authority has, despite regulation 33(6), voluntarily complied with the requirements set out in regulation 33(1) to (3); and

- (c) the contract has not been entered into before the end of the standstill period.

General interest grounds for not making a declaration of ineffectiveness.

60.(1) Where the Court is satisfied that any of the grounds for ineffectiveness applies, the Court must not make a declaration of ineffectiveness if—

- (a) the contracting authority or another party to the proceedings raises an issue under this regulation; and
- (b) the Court is satisfied that overriding reasons relating to a general interest, require that the effects of the contract should be maintained.

(2) For that purpose, economic interests in the effectiveness of the contract may be considered as overriding reasons only if in exceptional circumstances ineffectiveness would lead to disproportionate consequences.

(3) However, economic interests directly linked to the contract cannot constitute overriding reasons relating to a general interest.

(4) For that purpose, economic interests directly linked to the contract include—

- (a) the costs resulting from the delay in the execution of the contract;
- (b) the costs resulting from the commencement of a new procurement procedure;
- (c) the costs resulting from change of the economic operator performing the contract; and
- (d) the costs of legal obligations resulting from the ineffectiveness.

(5) For the purposes of subregulation (1)(b), overriding reasons may be taken to require that the effects of the contract should be maintained even if they do not require the Court to refrain from shortening the duration of the contract by an order under regulation 62(3)(a).

The consequences of ineffectiveness.

61.(1) Where a declaration of ineffectiveness is made, the contract is to be considered to be prospectively, but not retrospectively, ineffective as from the time when the declaration is made and, accordingly, those obligations under the contract which at that time have yet to be performed are not to be performed.

(2) Subregulation (1) does not prevent the exercise of any power under which the orders or decisions of the Court may be stayed, but at the end of any period during which a declaration of ineffectiveness is stayed, the contract is then to be considered to have been ineffective as from the time when the declaration had been made.

(3) When making a declaration of ineffectiveness, or at any time after doing so, the Court may make any order that it thinks appropriate for addressing—

- (a) the implications of subregulation (1) or (2) for the particular circumstances of the case; and
- (b) any consequential matters arising from the ineffectiveness.

(4) Such an order may, for example, address issues of restitution and compensation as between those parties to the contract who are parties to the proceedings so as to achieve an outcome which the Court considers to be just in all the circumstances.

(5) Subregulation (6) applies where the parties to the contract have, at any time before the declaration of ineffectiveness is made, agreed by contract any provisions for the purpose of regulating their mutual rights and obligations in the event of such a declaration being made.

(6) In those circumstances, the Court must not exercise its power to make an order under subregulation (3) in any way which is inconsistent with those provisions, unless and to the extent that the Court considers that those provisions are incompatible with the requirement in subregulation (1) or (2).

Penalties in addition to, or instead of, ineffectiveness

62.(1) Where the Court makes a declaration of ineffectiveness, it must also order that the contracting authority pay a civil financial penalty of the amount specified in the order.

(2) Subregulation (3) applies where—

- (a) in proceedings for a declaration of ineffectiveness, the Court is satisfied that any of the grounds for ineffectiveness applies but

does not make a declaration of ineffectiveness because regulation 60 requires it not to do so; or

- (b) in any proceedings, the Court is satisfied that the contract has been entered into in breach of any requirement imposed by regulation 34, 55, or 56(1)(b), and does not make a declaration of ineffectiveness (whether because none was sought or because the Court is not satisfied that any of the grounds for ineffectiveness applies).

(3) In those circumstances, the Court must order at least one, and may order both, of the following penalties—

- (a) that the duration of the contract be shortened to the extent specified in the order;
- (b) that the contracting authority pay a civil financial penalty of the amount specified in the order.

(4) When the Court is considering what order to make under subregulation (1) or (3), the overriding consideration is that the penalties must be effective, proportionate and dissuasive.

(5) In determining the appropriate order, the Court must take account of all the relevant factors, including—

- (a) the seriousness of the relevant breach of the duty owed in accordance with regulation 50;
- (b) the behaviour of the contracting authority;
- (c) where the order is to be made under subregulation (3), the extent to which the contract remains in force.

(6) Where more than one economic operator starts proceedings in relation to the same contract, subregulation (4) applies to the totality of penalties imposed in respect of the contract.

Civil financial penalties

(7) Subject to subregulation (8), where a contracting authority is ordered by the Court to pay a civil financial penalty under this regulation—

- (a) the Court's order must state that the penalty is payable to the Minister;

- (b) the Court must send a copy of the order to the Minister;
- (c) the contracting authority must pay the penalty to the Minister; and
- (d) the Minister must, on receipt of the penalty, pay it into the Consolidated Fund.

(8) Where the Minister is ordered to pay a civil financial penalty under this Part—

- (a) subregulation (7) does not apply; and
- (b) the Minister must pay the penalty into the Consolidated Fund.

(9) Where a contracting authority is a not a Government body any payment due under subregulation (7) may be enforced by the Minister as a judgment debt due to the Minister.

Contract shortening

(10) When making an order under subregulation (3)(a), or at any time after doing so, the Court may make any order that it thinks appropriate for addressing the consequences of the shortening of the duration of the contract.

(11) Such an order may, for example, address issues of restitution and compensation as between those parties to the contract who are parties to the proceedings so as to achieve an outcome which the Court considers to be just in all the circumstances.

(12) Subregulation (13) applies where the parties to the contract have, at any time before the order under subregulation (3)(a) is made, agreed by contract any provisions for the purposes of regulating their mutual rights and obligations in the event of such an order being made.

(13) In those circumstances, the Court must not exercise its power to make an order under subregulation (10) in any way which is inconsistent with those provisions, unless and to the extent that the Court considers that those provisions are incompatible with the primary order that is being made, or has been made, under subregulation (3)(a).

(14) In subregulation (3)(a), “duration of the contract” refers only to its prospective duration as from the time when the Court makes the order.

Ineffectiveness etc in relation to specific contracts based on a framework agreement.

63.(1) In this regulation, “specific contract” means a contract which—

- (a) is based on the terms of a framework agreement; and
- (b) was entered into before a declaration of ineffectiveness (if any) was made in respect of the framework agreement.

(2) A specific contract is not to be considered to be ineffective merely because a declaration of ineffectiveness has been made in respect of the framework agreement.

(3) Where a declaration of ineffectiveness has been made in respect of the framework agreement, the Court must, subject to subregulation (5), make a separate declaration of ineffectiveness in respect of each relevant specific contract.

(4) For that purpose, a specific contract is relevant only if a claim for a declaration of ineffectiveness in respect of that specific contract has been made—

- (a) within the time limits mentioned in regulation 53 as applicable to the circumstances of the specific contract; and
- (b) regardless of whether the claim was made at the same time as any claim for a declaration of ineffectiveness in respect of the framework agreement.

(5) Regulation 60 (general interest grounds for not making a declaration of ineffectiveness) applies for the purposes of subregulation (3), insofar as the overriding reasons relate specifically to the circumstances of the specific contract.

(6) This regulation does not prejudice the making of a declaration of ineffectiveness in relation to a specific contract in accordance with other provisions of these Regulations on the basis of—

- (a) the third ground of ineffectiveness set out in regulation 59(6) and (7); or
- (b) the second ground of ineffectiveness set out in regulation 59(5), where—

- (i) the relevant breach of the kind mentioned in regulation 59(5)(a) is entering into the specific contract in breach of regulation 55 or 56(1)(b), and
- (ii) the relevant breach of the kind mentioned in regulation 59(5)(b) relates specifically to the award of the specific contract and the procedure relating to that award, rather than to the award of the framework agreement and the procedure relating to it.

(7) A declaration of ineffectiveness must not be made in respect of a specific contract otherwise than in accordance with subregulation (3) or on a basis mentioned in subregulation (6).

(8) Where a declaration of ineffectiveness is made in respect of a specific contract in accordance with subregulation (3)–

- (a) regulation 61 (the consequences of ineffectiveness) applies; and
- (b) regulation 62(1) (requirement to impose a civil financial penalty) does not apply.

(9) Where the Court refrains, by virtue of subregulation (5), from making a declaration of ineffectiveness which would otherwise have been required by subregulation (3), the Court must, subject to subregulation (10), order that the duration of the contract be shortened to the extent specified in the order.

(10) The extent by which the duration of the contract is to be shortened under subregulation (9) is the maximum extent, if any, which the Court considers to be possible having regard to what is required by the overriding reasons mentioned in subregulation (5).

(11) In subregulations (9) and (10), “duration of the contract” refers only to its prospective duration as from the time when the Court makes the order.

Injunctions against the Crown

64. In proceedings against the Crown, the Court has power to grant an injunction despite section 14 of the Crown Proceedings Act.

PART 10

REVOCATION, SAVINGS AND TRANSITIONAL PROVISIONS

Revocation.

65. Subject to regulation 66, the following Regulations are revoked—

- (a) the Public Works Contracts Regulations 1996;
- (b) the Public Services Contracts Regulations 1996;
- (c) the Public Supply Contracts Regulations 1996; and
- (d) Public Procurement (Enforcement of Obligations) Regulations 1996.

Savings and transitional provisions.

66.(1) Where a contracting authority has commenced a contract award procedure before the coming into operation of these Regulations, the Regulations specified in regulation 65 (the revoked Regulations) shall continue to have effect on and after the coming into operation of these Regulations in relation to that contract award procedure, as if the revoked Regulations had not been revoked in accordance with regulation 65.

(2) A contracting authority has commenced a contract award procedure as referred to in subregulation (1) where, before the coming into operation of these Regulations, in relation to that procedure—

- (a) that contracting authority has sent a contract notice to the Official Journal in order to invite tenders, requests to be selected to tender for or to negotiate in respect of a proposed public contract;
- (b) in any case where there is no requirement to send a contract notice to the Official Journal in accordance with these Regulations, that contracting authority has despatched any form of advertisement seeking offers or expressions of interest in a proposed public contract;
- (c) where there is no advertising as referred to in paragraph (a) or (b), that contracting authority has contacted any economic operator in order to seek expressions of interest or offers in respect of a proposed public contract; or
- (d) that contracting authority has sent a notice to the Official Journal in accordance with the revoked Regulations in order to hold a design contest.

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(3) Where a framework agreement has been concluded before the coming into operation of these Regulations, these Regulations shall not apply to the award of any specific contract under that framework agreement.

SCHEDULE 1

Regulation 2(1), 2(5), 6, 33(6), 34(2), 36(6).

ACTIVITIES CONSTITUTING WORKS

Section F			Construction		CPV Code
Division	Group	Class	Subject	Notes	
45			Construction	Construction of new buildings and works, restoring and common repairs	45000000
	45.1		Site preparation		45100000
		45.11	Demolition and wrecking of buildings; earth moving	Demolition of buildings and other structures Clearing of building sites Earth moving; excavation, landfill, levelling and grading of construction sites, trench digging, rock removal, blasting, etc. Site preparation for mining: overburden removal and other development and preparation of mineral properties and sites Building site drainage Drainage of	45110000

				agricultural or forestry land	
		45.12	Test drilling and boring	Test drilling, test boring and core sampling for construction, geophysical, geological or similar purposes	45120000
	45.2		Building of complete constructions or parts thereof; civil engineering		45200000
		45.21	General construction of buildings and civil engineering works	<p>Construction of all types of buildings</p> <p>Construction of civil engineering constructions</p> <p>Bridges, including those for elevated highways, viaducts, tunnels and subways</p> <p>Long-distance pipelines, communication and power lines</p> <p>Urban pipelines, urban communication and power lines</p> <p>Ancillary urban works</p> <p>Assembly and erection of prefabricated constructions on the site</p>	45210000
		45.22	Erection of roof covering and frames	<p>Erection of roofs</p> <p>Roof covering</p> <p>Waterproofing</p>	45220000
		45.23	Construction	Construction of	45230000

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			of highways, roads, airfields and sport facilities	highways, streets, roads, other vehicular and pedestrian ways Construction of railways Construction of airfield runways Construction work, other than buildings, for stadiums, swimming pools, gymnasiums, tennis courts, golf courses and other sports installations Paintings of markings on road surfaces and car parks	
		45.24	Construction of water projects	Construction of: waterways, harbour and river works, pleasure ports (marinas), locks, etc. dams and dykes dredging subsurface work	45240000
		45.25	Other construction work involving special trades	Construction activities specialising in one aspect common to different kinds of structures, requiring specialised skill or equipment Construction of foundations,	45250000

				<p>including pile driving</p> <p>Water well drilling and construction, shaft sinking</p> <p>Erection of non-self-manufactured steel elements</p> <p>Steel bending</p> <p>Bricklaying and stone setting</p> <p>Scaffolds and work platform erecting and dismantling, including renting of scaffolds and work platforms;</p> <p>Erection of chimneys and industrial ovens</p>	
	45.3		Building installation		45300000
		45.31	Installation of electrical wiring and fittings	<p>Installation in buildings or other construction projects of:</p> <p>electrical wiring and fittings</p> <p>telecommunications systems</p> <p>electrical heating systems</p> <p>residential antennas and aerials</p> <p>fire alarms</p> <p>burglar alarm</p>	45310000

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				systems lifts and escalators lightning conductors, etc.	
		45.32	Insulation work activities	Installation in buildings or other construction projects of thermal, sound or vibration insulation	45320000
		45.33	Plumbing	Installation in buildings or other construction projects of: plumbing and sanitary equipment gas fittings heating, ventilation, refrigeration or air conditioning equipment and ducts sprinkler systems	45330000
		45.34	Other building installation	Installation of illumination and signalling systems for roads, railways, airports and harbours Installation in buildings or other construction projects of fittings and fixtures n.e.c	45340000
	45.4		Building completion		45400000

		45.41	Plastering	Application in buildings or other construction projects of interior and exterior plaster or stucco, including related lathing materials	45410000
		45.42	Joinery installation	Installation of non self-manufactured doors, windows, door and window frames, fitted kitchens, staircases, shop fittings and the like, of wood or other materials Interior completion such as ceilings, wooden wall coverings, movable partitions, etc.	45420000

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		45.43	Floor and wall covering	Laying, tiling, hanging or fitting in buildings or other construction projects of: ceramic, concrete or cut stone wall or floor tiles parquet and other wood floor coverings carpets and linoleum floor coverings, including of rubber or plastic terrazzo, marble, granite or slate floor or wall coverings wallpaper	45430000
		45.44	Painting and glazing	Interior and exterior painting of buildings Painting of civil engineering structures Installation of glass, mirrors etc	45440000
		45.45	Other building completion	Installation of private swimming pools steam cleaning, sand blasting and similar activities for building exteriors Other building completion and finishing work n.e.c.	45450000
	45.5		Renting of construction or		45500000

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			demolition equipment with operator		
		45.50	Renting of construction or demolition equipment with operator		45500000

SCHEDULE 2

Regulation 2(1),(5),5(1)(2), 8(4),
11(4), 13, 23(8), 33(5), 40(1)

CATEGORIES OF SERVICES

PART A			
Category	Services	CPC Reference No	CPV Code
1	Maintenance and repair of vehicles and equipment	6112, 6122, 633, 886	from 50100000 to 50982000 (except for 50310000 to 50324200 and 50116510-9, 50190000-3, 50229000-6, 50243000-0)
2	Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail	712 (except 71235), 7512, 87304	from 60112000-6 to 60129300-1 (except 60121000 to 60121600, 60122200-1, 60122230-0), and from 64120000-3 to 64121200-2
3	Transport by air but not transport of mail	73 (except 7321)	from 62100000-3 to 62300000-5 (except 62121000-6, 62221000-7)
4	Transport of mail by land, other than by rail, and by air	71235, 7321	60122200-1, 60122230-0, 62121000-6, 62221000-7
5	Telecommunications services	752	from 64221000-1, 64227000-3, 64228000-0, 64228100-1, 64228200-2
6	Financial services: (a) Insurance services (b) Banking and investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instruments and central bank services	Ex 81, 812, 814	from 66100000-1 to 66430000-3 and from 67110000-1 to 67262000-1
7	Computer and related services	84	from 50300000-8 to 50324200-4, from 72100000-6 to 72591000-4 (except 72318000-7 and from 72530000-9 to 72532000-3)

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8	Research and development services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority	85	from 73000000-2 to 73300000-5 (except 73200000-4, 73210000-7, 7322000-0)
9	Accounting, auditing and book-keeping services	862	from 74121000-3 to 74121250-0
10	Market research and public opinion polling services	864	from 74130000-9 to 74133000-0, and 74423100-1, 74423110-4
11	Management consultancy services and related services, but not arbitration and conciliation services	865, 866	from 73200000-4 to 73220000-0, from 74140000-2 to 74150000-5 (except 74142200-8), and 74420000-9, 74421000-6, 74423000-0, 74423200-2, 74423210-5, 74871000-5, 93620000-0
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	from 74200000-1 to 74276400-8, and from 74310000-5 to 74323100-0, and 74874000-6
13	Advertising services	871	from 74400000-3 to 74422000-3 (except 74420000-9 and 74421000-6)
14	Building-cleaning services and property management services	874, 82201 to 82206	from 70300000-4 to 70340000-6, and 74710000-9 to 74760000-4
15	Publishing and printing services on a fee or contract basis	88442	from 78000000-7 to 78400000-1
16	sewage and refuse disposal service: sanitation and similar services	94	From 90100000-8 to 90320000-6, and 50190000-3, 50229000-6, 50243000-0

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PART B			
Category	Services	CPC Reference No.	CPV Code
17	Hotel and restaurant services	64	from 55000000-0 to 55524000-9, and from 93400000-2 to 93411000-2
18	Transport by rail	711	60111000-9, and from 60121000-2 to 60121600-8
19	Transport by water	72	from 61000000-5 to 61530000-9, and from 63370000-3 to 63372000-7
20	Supporting and auxiliary transport services	74	62400000-6, 62440000-8, 62441000-5, 62450000-1, from 63000000-9 to 63600000-5 (except 63370000-3, 63371000-0, 63372000-7), and 74322000-2, 93610000-7
21	Legal services	861	from 74110000-3 to 74114000-1
22	Personnel placement and supply services except employment contracts	872	from 74500000-4 to 74540000-6 (except 74511000-4), and from 95000000-2 to 95140000-5
23	Investigation and security services, other than armoured car services	873 (except 87304)	from 74600000-5 to 74620000-1
24	Education and vocational education services	92	from 80100000-5 to 80430000-7
25	Health and social services	93	74511000-4, and from 85000000-9 to 85323000-9 (except 85321000-5 and 85322000-2)
26	Recreational, cultural and sporting services	96	from 74875000-3 to 74875200-5, and from 92000000-1 to 92622000-7 (except 92230000-2)
27	Other services except contracts for the acquisition, development, production or co-production of programmes by		

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	broadcasting organisations and contracts for broadcasting time.		
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SCHEDULE 3

Regulation 2(1)

EXTENSION TO NON-MEMBER STATES

1. Iceland
2. Liechtenstein
3. Norway

SCHEDULE 4

Regulation 8(5)

GOODS FOR THE PURPOSES OF THE THRESHOLDS

The goods for the purpose of regulation 8(5) are those specified in the following chapters for the Customs Co-operation Council Nomenclature (CCCN)

Chapter 25:	Salt; sulphur; earths and stone, plastering materials, lime and cement
Chapter 26:	Metallic ores, slag and ash
Chapter 27:	Mineral fuels, mineral oils and products of their distillation, bituminous substances; mineral waxes except: ex 27.10: special engine fuels
Chapter 28:	Inorganic chemicals, organic and inorganic compounds of precious metals, of rare-earth metals, of radioactive elements and of isotopes except: ex 28.09: explosives ex 28.13: explosives ex 28.14: tear gas ex 28.28: explosives ex 28.32: explosives ex 28.39: explosives ex 28.50: toxic products ex 28.51: toxic products ex 28.54: explosives

Chapter 29:	Organic chemicals except: ex 29.03: explosives ex 29.04: explosives ex 29.07: explosives ex 29.08: explosives ex 29.11: explosives ex 29.12: explosives ex 29.13: toxic products ex 29.14: toxic products ex 29.15: toxic products ex 29.21: toxic products ex 29.22: toxic products ex 29.23: toxic products ex 29.26: explosives ex 29.27: toxic products ex 29.29: explosives
Chapter 30:	Pharmaceutical products
Chapter 31:	Fertilisers
Chapter 32:	Tanning and dyeing extracts, tannings and their derivatives, dyes, colours, paints and varnishes, putty, fillers and stoppings, inks.
Chapter 33:	Essential oils and resinoids, perfumery, cosmetic or toilet preparations

Chapter 34:	Soap, organic surface-active agents, washing preparations, lubricating preparations, artificial waxes, prepared waxes, polishing and scouring preparations, candles and similar articles, modelling pastes and 'dental waxes'
Chapter 35:	Albuminoidal substances, glues, enzymes
Chapter 37:	Photographic and cinematographic goods
Chapter 38:	Miscellaneous chemical products, except: ex 38.19: toxic products
Chapter 39:	Artificial resins and plastic materials, celluloses esters and ethers, articles thereof, except: ex 39.03 explosives
Chapter 40:	Rubber, synthetic rubber, factice, and articles thereof, except: ex 40.11: bullet-proof tyres
Chapter 41:	Raw hides and skins (other than furskins) and leather
Chapter 42:	Articles of leather, saddlery and harness, travel goods, handbags and similar containers, articles of animal gut (other than silkworm gut)
Chapter 43:	Furskins and artificial fur, manufactures thereof
Chapter 44:	Wood and articles of wood, wood charcoal
Chapter 45:	Cork and articles of cork
Chapter 46:	Manufactures of straw of esparto and of other plaiting materials, basketware and wickerwork
Chapter 47:	Paper making material
Chapter 48:	Paper and paperboard, articles of paper pulp, of paper or of paperboard

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Chapter 49:	Printed books, newspapers, pictures and other products of the printing industry, manuscripts, type-scripts and plans
Chapter 65:	Headgear and parts thereof
Chapter 66:	Umbrellas, sunshades, walking-sticks, whips, riding-crops and parts thereof
Chapter 67:	Prepared feathers and down and articles made of feathers or of down, artificial flowers, articles of human hair
Chapter 68:	Articles of stone, of plaster, of cement, of asbestos, of mica and of similar materials
Chapter 69:	Ceramic products
Chapter 70:	Glass and glassware
Chapter 71:	Pearls, precious and semi-precious stones, precious metals, rolled precious metals, and articles thereof; imitation jewellery
Chapter 73:	Iron and steel and articles thereof
Chapter 74:	Copper and articles thereof
Chapter 75:	Nickel and articles thereof
Chapter 76:	Aluminium and articles thereof
Chapter 77:	Magnesium and beryllium and articles thereof
Chapter 78:	Lead and articles thereof
Chapter 79:	Zinc and articles thereof
Chapter 80:	Tin and articles thereof
Chapter 81:	Other base metals employed in metallurgy and articles thereof
Chapter 82:	Tools, implements, cutlery, spoons and forks, of base metal, parts thereof, except: ex 82.05: tools

	ex 82.07: tools, parts
Chapter 83:	Miscellaneous articles of base metal
Chapter 84:	Boilers, machinery and mechanical appliances, parts thereof, except: ex 84.06: engines ex 84.08: other engines ex 84.45: machinery ex 84.53: automatic data-processing machines ex 84.55 parts of machines under heading No 84.53 ex 84.59: nuclear reactors
Chapter 85:	Electrical machinery and equipment, parts thereof, except: ex: 85.13: telecommunication equipment ex: 85.15: transmission apparatus
Chapter 86:	Railway and tramway locomotives, rolling-stock and parts thereof, railway and tramway tracks fixtures and fittings, traffic signalling equipment of all kinds (not electrically powered), except: ex 86.02: armoured locomotives, electric ex 86.03: other armoured locomotives ex 86.05: armoured wagons ex 86.06 repair wagons

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	ex 86.07 wagons
Chapter 87:	Vehicles, other than railway or tramway rolling-stock, and parts thereof, except: ex 87.08: tanks and other armoured vehicles ex 87.01: tractors ex 87.02: military vehicles ex 87.03: breakdown lorries ex 87.09: motorcycles ex 87.14: trailers
Chapter 89:	Ships, boats and floating structures, except: ex 89.01A: warships
Chapter 90:	Optical, photographic, cinematographic, measuring, checking, precision, medical and surgical instruments and apparatus, parts thereof, except: ex 90.05: binoculars ex 90.13: miscellaneous instruments, lasers ex 90.14: telemeters ex 90.28: electrical and electronic measuring instruments ex 90.11: microscopes ex 90.17: medical instruments ex 90.18: mechano-therapy appliances ex 90.19: orthopaedic appliances

	ex 90.20: X-ray apparatus
Chapter 91:	Manufacture of watches and clocks
Chapter 92:	Musical instruments, sound recorders or reproducers, television image and sound recorders or reproducers, parts and accessories of such articles
Chapter 94:	Furniture and parts thereof, bedding, mattresses, mattress supports, cushions and similar stuffed furnishings, except: ex 94.01A: aircraft seats
Chapter 95:	Articles and manufactures of carving or moulding material
Chapter 96:	Brooms, brushes, power-puffs and sieves
Chapter 98:	Miscellaneous manufactured articles.

SCHEDULE 5

Regulation 23(4)(j) & (9)

PROFESSIONAL OR TRADE REGISTERS

PUBLIC SERVICES CONTRACTS

1. In relation to procedures for the award of a public services contract, the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(i)–

in Austria, the Firmenbuch, Gewerberegister or Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister or the orders professionnels/ beroepsorden;

in Bulgaria, " ;

in Croatia, Sudski registar trgova kih društava u Republici Hrvatskoj or Obrtni registar Republike Hratske;

in Denmark, the Erhvervs- og Selskabsstyrelsen;

in Finland, the Kaupparekisteri or Handelsregistret;

in France, the Registre du commerce et des sociétés and the Répertoire des métiers;

in Germany, the Handelsregister, the Handwerksrolle, the Verinsregister, Partnerschaftsregister or the Mitgliedsverzeichnisse de Berufskammern der Ländern;

in Iceland, the Firmaskrá or Hlutafélagaskrá;

in Ireland, the service provider may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name and under a specific trading name;

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

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

in Luxembourg, the Registre aux firmes and the Rôle de la Chambre des métiers;

in the Netherlands, the Handelsregister;

in Norway, the Foretaksregisteret;

in Portugal, the Registo nacional das Pessoas Colectivas;

in Romania, "Registrul Comer ului;

in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda ; and

in Sweden, the Aktiebolags, Handelsellerföreningsregistret.

in the United Kingdom, the contractor may be requested to provide a certificate from the Registrar of Companies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

PUBLIC WORKS CONTRACTS

2. In relation to procedures for the award of a public works contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(i)–

in Austria, the Firmenbuch, the Gewerberegister, the Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister;

in Bulgaria, " ;

in Croatia, Sudski registar trgova kih društava u Republici Hrvatskoj or Obrtni registar Republike Hratske;

in Denmark, the Erhvervs-og Selskabsstyrelsen;

in Finland, the Kaupparekisteri/Handelsregistret;

in France, the Registre du commerce et des sociétés or the Répertoire des métiers;

in Germany, the Handelsregister and the Handwerksrolle;

in Greece, the MEE of the Ministry for Environment, Town and Country Planning and Public Works ();

in Iceland, the Firmaskrá

in Ireland, the contractor may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name;

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

in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;

in the Netherlands, the Handelsregister;

in Norway, the Foretaksregisteret;

in Portugal, the Instituto dos Mercados de Obras Públicas e Particulares e do Imobiliário (IMOPPI) (CAEOPP);

in Romania, "Registrul Comer ului;

in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda; and

in Sweden, aktiebolags-, handels- eller f reningsregistren.

in the United Kingdom, the contractor may be requested to provide a certificate from the Registrar of Companies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

PUBLIC SUPPLY CONTRACTS

3. In relation to procedures for the award of a public supply contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)–

in Austria, the Firmenbuch, the Gewerberegister, the Mitgliederverzeichnisse der Landeskammern;

in Belgium, the Registre du commerce/Handelsregister;

in Bulgaria, " ;

in Croatia, Sudski registar trgova kih društava u Republici Hrvatskoj or Obrtni registar Republike Hratske;

in Denmark, the Erhvervs-og Selskabsstyrelsen;

in Finland, the Kaupparekisteri/Handelsregistret;

in France, the Registre du commerce et des sociétés or the Répertoire des métiers;

in Germany, the Handelsregister and the Handwerksrolle;

in Greece, the μ μ μ ;

in Iceland, the Firmaskrá;

in Ireland, the supplier may be requested to provide a certificate from the Registrar of companies or the Registrar of Friendly Societies that he is certified as incorporated or registered or, if he is not so certified, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place under a given business name and under a specific trading name;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato and Registro delle commissioni provinciali per l'artigianato;

in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;

in Norway, the Foretaksregisteret;

in the Netherlands, the Handelsregister;

in Portugal, the Registo Nacional das Pessoas Colectivas;

in Romania, "Registrul Comer ului;

in Spain, the Registro Mercantil; and

in Sweden, aktiebolags-, handels- eller f reningsregistren.

in the United Kingdom, the contractor may be requested to provide a certificate from the Registrar of Companies or, if this is not the case, a certificate stating that the person concerned has declared on oath that he is engaged in the profession in question in the country in which he is established, in a specific place and under a given business name.

SCHEDULE 6

Regulations 3(1) and 23(1)(f)

PART 1

Extracts from Article 1 (9)

A “body governed by public law” means any body–

- (a) established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character;
- (b) having legal personality; and
- (c) financed, for the most part, by the State, regional or local authorities, or other bodies governed by public law; or subject to management supervision by those bodies; or having an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities, or by other bodies governed by public law.

Non-exhaustive lists of bodies and categories of bodies governed by public law which fulfil the criteria referred to in (a), (b) and (c) of the above definition may be made by the Government by notice in the Gazette pursuant to regulation 3(1)(c). The Government shall periodically notify the Commission of any changes to their lists of bodies and categories of bodies.

“Contracting authorities” means the State, regional or local authorities, bodies governed by public law, associations formed by one or several of such authorities or one or several of such bodies governed by public law.

PART 2

Extracts from Article 45

Personal situation of the candidate or tenderer

“1. Any candidate or tenderer who has been the subject of a conviction by final judgment of which the contracting authority is aware for one or more of the reasons listed below shall be excluded from participation in a public contract:

- (a) participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA;
- (b) corruption, as defined in Article 3 of the Council Act of 26 May 1997 and Article 3(1) of Council Joint Action 98/742/JHA respectively;
- (c) fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities;
- (d) money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

They may provide for a derogation from the requirement referred to in the first subparagraph for overriding requirements in the general interest.

For the purposes of this paragraph, the contracting authorities shall, where appropriate, ask candidates or tenderers to supply the documents referred to in paragraph 3 and may, where they have doubts concerning the personal situation of such candidates or tenderers, also apply to the competent authorities to obtain any information they consider necessary on the personal situation of the candidates or tenderers concerned. Where the information concerns a candidate or tenderer established in a State other than that of the contracting authority, the contracting authority may seek the cooperation of the competent authorities. Having regard for the national laws of the Member State where the candidates or tenderers are established, such requests shall relate to legal and/or natural persons, including, if appropriate, company directors and any person having powers of representation, decision or control in respect of the candidate or tenderer.

2. Any economic operator may be excluded from participation in a contract where that economic operator:

- (a) is bankrupt or is being wound up, where his affairs are being administered by the court, where he has entered into an arrangement with creditors, where he has suspended business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;

- (b) is the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or of an arrangement with creditors or of any other similar proceedings under national laws and regulations;
- (c) has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- (d) has been guilty of grave professional misconduct proven by any means which the contracting authorities can demonstrate;
- (e) has not fulfilled obligations relating to the payment of social security contributions in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (f) has not fulfilled obligations relating to the payment of taxes in accordance with the legal provisions of the country in which he is established or with those of the country of the contracting authority;
- (g) is guilty of serious misrepresentation in supplying the information required under this Section or has not supplied such information.

Member States shall specify, in accordance with their national law and having regard for Community law, the implementing conditions for this paragraph.

3. Contracting authorities shall accept the following as sufficient evidence that none of the cases specified in paragraphs 1 or 2(a), (b), (c), (e) or (f) applies to the economic operator:

- (a) as regards paragraphs 1 and 2(a), (b) and (c), the production of an extract from the “judicial record” or, failing that, of an equivalent document issued by a competent judicial or administrative authority in the country of origin or the country whence that person comes showing that these requirements have been met;
- (b) as regards paragraph 2(e) and (f), a certificate issued by the competent authority in the Member State concerned.

Where the country in question does not issue such documents or certificates, or where these do not cover all the cases specified in paragraphs 1 and 2(a),

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(b) and (c), they may be replaced by a declaration on oath or, in Member States where there is no provision for declarations on oath, by a solemn declaration made by the person concerned before a competent judicial or administrative authority, a notary or a competent professional or trade body, in the country of origin or in the country whence that person comes.

4. Member States shall designate the authorities and bodies competent to issue the documents, certificates or declarations referred to in paragraph 3 and shall inform the Commission thereof. Such notification shall be without prejudice to data protection law.”.