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STATUTORY INSTRUMENTS

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**1993 No. 3228**

**The Public Services Contracts Regulations 1993**

**PART I**  
**GENERAL**

**Title and commencement**

1. These Regulations may be cited as the Public Services Contracts Regulations 1993 and shall come into force on 13th January 1994.

**Interpretation**

2.—(1) In these Regulations—

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

“the Commission” means the Commission of the Communities;

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

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

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

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

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

“ECU” means the European Currency Unit as defined in Council Regulation (EEC) No. 3180/78(1);

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

“financial year” means the period of 12 months ending on 31st 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;

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(1) OJ No. L379, 30.12.78, p.1, as amended by Council Regulation (EC) No. 2626/84 (OJ No. L247, 16.9.84, p.1) and Council Regulation EEC No. 1971/89 (OJ No. L189, 4.7.89, p.1).

“government department” includes a Northern Ireland department or the head of such department;

“Minister of the Crown” means the holder of an office in Her Majesty’s Government in the United Kingdom, and includes the Treasury;

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

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

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

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

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

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

- (a) a contract of employment or other contract of services;
- (b) a public works contract within the meaning of the Public Works Contracts Regulations 1991(2);
- (c) a public supply contract within the meaning of the Public Supply Contracts Regulations 1991(3);
- (d) any contract where the contracting authority is a utility within the meaning of regulation 3 of the Utilities Supply and Works Contracts Regulations 1992(4) and the services are to be provided under it for the purposes of carrying out an activity specified in the Part of Schedule 1 of those Regulations in which the utility is specified; or
- (e) a contract under which a contracting authority engages a person to provide services to the public lying within its responsibility and under which the consideration given by the contracting authority consists of or includes the right to exploit the provision of the services.

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

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

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(5); and

“year” means a calendar year.

(2) For the purposes of these regulations—

- (a) “a part A services contract” is a contract under which services specified in Part A of Schedule 1 are to be provided;
- (b) “a Part B services contract” is a contract under which services in Part B of Schedule 1 are to be provided,

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(2) S. I. 1991/2680 as amended by S. I. 1992/2379.

(3) S. I. 1991/2679 as amended by S. I. 1992/3279.

(4) S. I. 1992/3279 as amended by S. I. 1993/3227.

(5) 1971 c. 80.

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

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

(3) The value in the currency of any member State of any amount expressed in these Regulations in ECU shall be determined by reference to the rate for the time being applying for the purposes of Council Directive 92/50/EEC(6) as published from time to time in the Official Journal(7).

(4) Where a thing is required to be done under these Regulations—

- (a) within a period after an action is taken, the day on which that action was taken shall not be counted in the calculation of that period.
- (b) within a certain period, that period must include 2 working days;
- (c) within a period and the last day of that period is not a working day, the period shall be extended to include the following working day.

(5) References in these Regulations to a regulation are references to a regulation in these Regulations and references to a Schedule are references to a Schedule to these Regulations.

### **Contracting authorities**

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

- (a) a Minister of the Crown,
- (b) a government department,
- (c) the House of Commons,
- (d) the House of Lords,
- (e) the Northern Ireland Assembly,
- (f) a local authority,
- (g) a fire authority constituted by a combination scheme under the Fire Services Act 1947(8),
- (h) the Fire Authority for Northern Ireland,
- (i) a police authority constituted under section 2 of the Police Act 1964(9) or a combined police authority established by an amalgamation scheme under that Act,
- (j) the Police Authority for Northern Ireland,
- (k) an authority established under section 10 of the Local Government Act 1985(10),
- (l) a joint authority established by Part IV of that Act,
- (m) any body established pursuant to an order under section 67 of that Act,
- (n) the Broads Authority,
- (o) any joint board the constituent members of which consist of any of the bodies specified in paragraphs (f), (g), (i), (k), (l), (m) and (n) above,

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(6) OJ No. L209, 24.7.92, p.1.

(7) The rates are determined for each successive period of two years by calculating the average of the daily exchange rates between each currently and the ECU in a period of 24 months preceding the determination.

(8) 1947 c. 41.

(9) 1964 c. 48.

(10) 1985 c. 51.

- (p) a joint or special planning board constituted for a National Park by an order under paragraphs 1 or 3 of Schedule 17 to the Local Government Act 1972<sup>(11)</sup>,
  - (q) a joint education board constituted under the provisions of Part I of the First Schedule to the Education Act 1944<sup>(12)</sup>
  - (r) a corporation established, or a group of individuals appointed to act together, for the specific purposes of meeting needs in the general interest, not having an industrial or commercial character, and
    - (i) financed wholly or mainly by another contracting authority, or
    - (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 these individuals, being appointed by another contracting authority, and
  - (s) an association of or formed by one or more of the above.
- (2) In the application of these Regulations to England and Wales, “local authority” in paragraph (1) above means—
- (a) a county council, a district council, a London borough council, a parish council, a community council, or the Council of the Isles of Scilly;
  - (b) the Common Council of the City of London in its capacity as local authority or police authority.
- (3) In the application of these Regulations to Scotland, “local authority” in paragraph (1) above means a regional, islands or district council or any joint board or joint committee within the meaning of section 235 of the Local Government (Scotland) Act 1973<sup>(13)</sup>.
- (4) In the application of these Regulations to Northern Ireland, “local authority” in paragraph (1) above means a district council within the meaning of the Local Government Act (Northern Ireland) 1972<sup>(14)</sup>.
- (5) Where an entry specified in paragraph (1) above does not have the capacity to enter into a contract, the contracting authority in relation to that entity means a person whose function it is to enter into contracts for that entity.

### Services providers

- 4.—(1) For the purposes of these Regulations, a “services provider” means a person—
- (a) who sought, or who seeks, or who would have wished,
    - (i) to be the person to whom a public services contract is awarded, or
    - (ii) to participate in a design contest, and
  - (b) who is a national of and established in a member State.
- (2) When these Regulations apply a contracting authority shall not treat a person who is not a national of and established in a member State more favourably than one who is.

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<sup>(11)</sup> 1972 c. 70.

<sup>(12)</sup> 1944 c. 31.

<sup>(13)</sup> 1973 c. 65.

<sup>(14)</sup> 1972 c. 9 (N. I.).

## Application of the Regulations

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

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

regulation 8 (Technical specifications in contract documents)

regulation 22 (Contract award notices)

regulation 27(2) (Statistical and other reports)

regulation 28 (Responsibility for obtaining reports)

regulation 29 (Publication of notices)

## General exclusions

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

- (a) for the acquisition of land, including buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land;
- (b) for the acquisition, development, production or co-production of programme material for radio or television by a broadcaster or for the purchase of broadcasting time;
- (c) for voice telephony, telex, radiotelephony, paging or satellite services;
- (d) for arbitration or conciliation services;
- (e) for financial services in connection with the issue, purchase, sale or transfer of securities or other financial instruments;
- (f) for central banking services;
- (g) for research and development services unless—
  - (i) the benefits are to accrue exclusively to the contracting authority for its use in the conduct of its own affairs, and
  - (ii) the services are to be wholly paid for by the contracting authority;
- (h) to which the provisions of Article 223 of the EEC Treaty apply;
- (i) which is classified as secret or where the carrying out of the services under it must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions of any part of the United Kingdom or when the protection of the basic interests of the security of the United Kingdom require it;
- (j) where different procedures govern the procedures leading to the award of the contract and it is to be entered into—
  - (i) pursuant to an international agreement to which the United Kingdom and a State which is not a member State are parties and it provides for the provision of services intended for the joint implementation or exploitation of a project pursuant to that agreement;
  - (ii) pursuant to an international agreement relating to the stationing of troops; or
  - (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members; or

- (k) under which services are to be provided by another contracting authority, or by a person which is a contracting authority in another member State for the purposes of Council Directive 92/50/EEC(15), because that contracting authority or person has an exclusive right—
- (i) to provide the services, or
  - (ii) which is necessary for the provision of the services,
- pursuant to any published law, regulation or administrative provision, which is compatible with the EEC Treaty.

### Thresholds

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

(2) Subject to paragraphs (3) to (11) below, the estimated value for the purposes of paragraph (1) above of a public services contract shall be the value of the consideration which the contracting authority expects to give under the contract.

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

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

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

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

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

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

the estimated value of the contract for the purposes of paragraph (1) above shall be the amount calculated under paragraph (7) below.

(7) The contracting authority shall calculate the amount referred to in paragraph (6) above either—

- (a) by taking the aggregate of the value of the consideration given by the contracting authority under public services contracts which have similar characteristics and which were for the

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(15) OJ No. L209, 24.7.92, p. 1.

provision of services of the type to be provided under the contract, during its last financial year ending before, or during the period of 12 months ending immediately before, the relevant time and by adjusting that amount to take account of any expected changes in the quantity and cost of the services in the period of 12 months commencing with the relevant time, or

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

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

- (a) the decision whether to enter the contact 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 paragraphs (4) and (7) above shall be adapted by aggregating only the value of the consideration which the contracting authority has given or expects to give, as the case may be, under contracts for the provision of services which were or are required for the sole purposes of that unit.

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

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

(11) A contracting authority shall not enter into separate public services contracts nor select nor exercise a choice under a valuation method in accordance with paragraph (7) above with the intention of avoiding the application of these Regulations to those contracts.

(12) The relevant time for the purposes of paragraphs (1) and (7)(a) above 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.