
STATUTORY INSTRUMENTS

2006 No. 5

The Public Contracts Regulations 2006

PART 1

GENERAL

General exclusions

6.—(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 contracting authority is a utility within the meaning of regulation 3 of the Utilities Contracts Regulations 2006⁽¹⁾ and—

- (a) that contract is for the purposes of carrying out an activity listed 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 or 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 of energy, where that utility is engaged in—
 - (aa) 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;
 - (bb) 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
 - (cc) exploring for or extracting oil, gas, coal or other solid fuels; or
- (f) where that utility is engaged in an activity excluded from the Utilities Contracts Regulations 2006 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 any part of the United Kingdom or when the protection of the essential interests of the security of the United Kingdom require it;
- (c) where Article 296 of the EC Treaty 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 EC Treaty to which the United Kingdom and a State which is not a relevant State are parties 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;
 - (ii) an international agreement relating to the stationing of troops and concerning the undertakings of a relevant State or a state which is not 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;
- (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 another 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 EC Treaty; or
- (m) which is a services concession contract awarded by a contracting authority, subject to the application of regulation 46.