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STATUTORY INSTRUMENTS

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**2011 No. 1848**

**The Defence and Security Public Contracts Regulations 2011**

**PART 1**

**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Defence and Security Public Contracts Regulations 2011 and come into force on 21st August 2011.

**Review**

2.—(1) The Secretary of State must carry out a review of the provisions of these Regulations before the end of each review period and set out the conclusions of the review in a report.

(2) In carrying out the review the Secretary of State will, so far as is reasonable, compare the implementation of European obligations in the Defence and Security Procurement Directive with the implementations of those obligations in other member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established by those provisions;
- (b) assess the extent to which those objectives have been achieved;
- (c) include the assessment of the comparison between implementations; and
- (d) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The Secretary of State must lay the report before Parliament before the end of the review period.

(5) The first review period is the period of five years beginning with the day on which these Regulations came into force.

(6) Each subsequent review period is a period of five years beginning with the date on which the report of the review carried out during the preceding review period was laid before Parliament.

**Interpretation**

3.—(1) In these Regulations—

“aircraft” means any machine capable of flight (whether or not propelled by mechanical means);

“applied research” means original work undertaken with a view to acquiring new knowledge and directed primarily towards a particular end or objective;

“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, a facsimile number, a postal address or an e-mail address;

“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 within the meaning of regulation 3 of the Public Contracts Regulations 2006(1) or regulation 3 of the Public Contracts (Scotland) Regulations 2006(2) or a European public body, if that authority or body—

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

“classified information” means any information or material, regardless of its form, nature or mode of transmission, to which a security classification or protection has been attributed and which in the interests of national security and in accordance with the law or administrative provisions of any part of the United Kingdom requires protection against appropriation, destruction, removal, disclosure, loss or access by any unauthorised individual, or any other type of compromise;

“the Commission” means the European Commission;

“Commission Regulation (EC) No 1564/2005” means Commission Regulation (EC) No 1564/2005 of 7 September 2005(3);

“Common Procurement Vocabulary” means the reference nomenclature applicable to contracts as adopted by Regulation (EC) No 2195/2002 of 5th November 2002 of the European Parliament and of the Council on the Common Procurement Vocabulary(4);

“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;

“contract” means, except in regulation 67 and unless specified otherwise, a services contract, a supply contract or a works contract;

“contract documents” means the invitation to tender for or to negotiate a 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 67, a notice sent to the Official Journal in accordance with these Regulations—

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(1) S.I. 2006/5; amended by S.I. 2007/2157, 2007/3542, 2008/2256, 2008/2683, 2008/2848, 2009/1307 and 2009/2992.  
(2) S.S.I. 2006/1; amended by S.I. 2007/2157 and S.S.I. 2007/565, 2008/94, 2008/291, 2008/376, 2009/428 and 2010/222. S.S.I. 2009/428 was amended by S.S.I. 2009/439.  
(3) OJ No L 257, 1.10.2005, p.1, as amended by Commission Regulation (EC) No 1792/2006, OJ No L 362, 20.12.2006, p.1 and Commission Regulation (EC) No 1150/2009, OJ No L 313, 28.11.2009, p.3.  
(4) OJ No L 340, 16.12.2002, p.1; relevant amending instruments are Regulation (EC) No 213/2008 of the Commission of the European Communities, OJ No L 74, 15.3.2008, p.1 and Regulation (EC) No 596/2009 of the European Parliament and the Council, OJ No L 188, 18.7.2009, p.14.

- (a) subject to sub-paragraph (b), containing the information specified in Annex IV to the Defence and Security Procurement Directive; or
- (b) if [Commission Regulation \(EC\) No 1564/2005](#) sets out a form to be used for this purpose, in that form and containing the information therein specified;

“contracting authority” has the meaning given to it by regulation 4;

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

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

“CPV” means Common Procurement Vocabulary;

“crisis” means any situation—

- (a) in which a harmful event has occurred which clearly exceeds the dimensions of harmful events in everyday life and which substantially endangers or restricts the life and health of people, or has a substantial impact on property values, or requires measures in order to supply the population with necessities, or
- (b) in which such a harmful event is deemed by the Secretary of State to be impending, and includes armed conflicts and wars;

“Defence and Security Procurement Directive” means Directive [2009/81/EC](#) of the European Parliament and of the Council of 13th July 2009<sup>(5)</sup>;

“disabled person” means any person recognised as disabled within the meaning of the Equality Act 2010<sup>(6)</sup> and “disabled persons” is to be interpreted accordingly;

“disability” has the same meaning as in that Act;

“economic operator” has the meaning given to it by regulation 5;

“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;

“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 EU Treaties;

“European standard” has the meaning given to it in regulation 12(1);

“experimental development” means work based on existing knowledge obtained from research or practical experience with a view to initiating the manufacture of new materials, products or devices, establishing new processes, systems and services or considerably improving those that already exist and includes the realisation of technological demonstrators;

“financial year” means, unless the context otherwise requires, the period of 12 months ending on the date in any year in respect of which the accounts of any person are prepared;

“framework agreement” means, except in regulations 42 and 67, an agreement or other arrangement between one or more contracting authorities and one or more economic operators

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(5) OJ No L 216, 20.8.2009, p.76, as amended by [Commission Regulation \(EC\) No 1177/2009](#), OJ No L 314, 1.12.2009, p.64.

(6) [2010 c. 15](#).

which establishes the terms (in particular the terms as to price and, where appropriate, quantity) 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;

“fundamental research” means experimental or theoretical work undertaken mainly with a view to acquiring new knowledge regarding the underlying foundation of phenomena and observable facts without any particular application or use in view;

“goods” includes electricity, substances, growing crops and things attached to or forming part of the land which are agreed to be severed before the purchase or hire under a supply contract, and any ship, aircraft or vehicle;

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

“international standard” has the meaning given to it in regulation 12(1);

“life cycle” means all the possible successive stages of a product, including research and development, industrial development, production, repair, modernisation, modification, maintenance, logistics, training, testing, withdrawal and disposal;

“military equipment” means equipment specifically designed or adapted for military purposes and intended for use as arms, munitions or war material including equipment—

- (a) listed in the Common Military List of the European Union<sup>(7)</sup> as amended from time to time; or
- (b) within the product types included in the list of arms, munitions and war material adopted by the Council in its decision 255/58 of 15th April 1958;

“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 economic operators selected by it;

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

“prior information notice” means a notice sent to the Official Journal in accordance with regulation 14—

- (a) subject to sub-paragraph (b), containing the information specified in Annex IV to the Defence and Security Procurement Directive; or
- (b) if [Commission Regulation \(EC\) No 1564/2005](#) sets out a form to be used for this purpose, in that form and containing the information therein specified;

“research and development” means all activities comprising fundamental research, applied research and experimental development but does not include the making and qualification of pre-production prototypes, tools and industrial engineering, industrial design or manufacture;

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

“sensitive equipment”, “sensitive work or works” and “sensitive services” means equipment, work or works and services for security purposes, involving, requiring or containing classified information;

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(7) OJ No C 86, 18.3.2011, p.1.

“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 works contract, or
- (b) a supply contract,

but a contract for both goods and services shall be considered to be a 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 services contract;

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

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

“ship” includes any boat, hovercraft 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 supply contract is awarded; and
- (b) who is a national of and established in a member State;

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

- (c) 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
- (d) 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 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;

“technological demonstrator” means a device demonstrating the performance of a new concept or a new technology in a relevant or representative environment;

“the TEU” means the Treaty on European Union<sup>(8)</sup>;

“the TFEU” means the Treaty on the Functioning of the European Union<sup>(9)</sup>;

“work”, unless the context otherwise requires, 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, Christmas Day, Good Friday or Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971<sup>(10)</sup>;

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

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<sup>(8)</sup> OJ No C 115, 9.5.2008, p.13.

<sup>(9)</sup> OJ No C 115, 9.5.2008, p.47.

<sup>(10)</sup> 1971 c. 80. There are amendments to this Act which are not relevant to these Regulations.

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

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

“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; and

“year” means a calendar year.

(2) Subject to paragraph (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) 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.

(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.

### **Contracting authorities**

**4.** For the purposes of these Regulations “contracting authority”, except the first occurrence in the definition of “central purchasing body”, means—

- (a) a “contracting authority” within the meaning of regulation 3 of the Public Contracts Regulations 2006(**11**);
- (b) a “contracting authority” within the meaning of regulation 3 of the Public Contracts (Scotland) Regulations 2006(**12**);
- (c) a “utility” within the meaning of regulation 3 of the Utilities Contracts Regulations 2006(**13**); and
- (d) a “utility” within the meaning of regulation 3 of the Utilities Contracts (Scotland) Regulations 2006(**14**).

(11) S.I. 2006/5; amended by S.I. 2007/2157, 2007/3542, 2008/2256, 2008/2683, 2008/2848, 2009/1307 and 2009/2992.

(12) S.S.I. 2006/1; amended by S.I. 2007/2157 and S.S.I. 2007/565, 2008/94, 2008/291, 2008/376, 2009/428 and 2010/222. S.S.I. 2009/428 was amended by S.S.I. 2009/439.

(13) S.I. 2006/6; amended by S.I. 2007/2157, 2007/3542, 2008/2256, 2008/2848 and 2009/3100.

(14) S.S.I. 2006/2; amended by S.I. 2007/2157 and S.S.I. 2007/565, 2008/94, 2008/291, 2008/376 and 2009/428. S.S.I. 2009/428 was amended by S.S.I. 2009/439.

## **Economic operators**

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

(2) A contracting authority shall—

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

## **Application**

6.—(1) Subject to Article 4(2) of the TEU and Articles 36, 51, 52, 62 and 346 of the TFEU, these Regulations apply whenever a contracting authority seeks offers in relation to a proposed supply contract, works contract, Part A services contract or, subject to paragraph (2), a framework agreement, other than a contract or framework agreement excluded from the application of these Regulations by regulation 7 or 9, for—

- (a) the supply of military equipment, including any parts, components or subassemblies of military equipment;
- (b) the supply of sensitive equipment, including any parts, components or subassemblies of sensitive equipment;
- (c) work, works, goods or services directly related to equipment referred to in sub-paragraph (a) or (b) for any and all elements of its life cycle;
- (d) work, works or services for specifically military purposes; or
- (e) sensitive work or works or sensitive services.

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

(3) Subject to Article 4(2) of the TEU and Articles 36, 51, 52, 62 and 346 of the TFEU, whenever a contracting authority seeks offers in relation to a proposed Part B services contract or a framework agreement in respect of which only Part B services contracts can be based or awarded, other than one excluded by virtue of regulation 7 or 9, for any services referred to in sub-paragraphs (c), (d) or (e) of paragraph (1)—

- (a) Parts 1, 9 and 10 apply; and
- (b) the following provisions in Parts 2 to 8 apply—
  - (i) regulation 12 (technical specifications in the contract documents);
  - (ii) regulation 32 (contract award notice);
  - (iii) regulation 46(2) (statistical and other reports);
  - (iv) regulation 47 (provision of reports); and
  - (v) regulation 48 (publication of notices).

(4) Where a contract or framework agreement has as its object work, works, goods or services falling partly within the application of these Regulations and partly within the application of the Public Contracts Regulations 2006, the Utilities Contracts Regulations 2006, the Public Contracts (Scotland) Regulations 2006 or the Utilities Contracts (Scotland) Regulations 2006 and the award of a single contract or the conclusion of a single framework agreement is justified for objective reasons, the contracting authority must award the contract or conclude the framework agreement in accordance with these Regulations.

(5) Where a contract or framework agreement has as its object work, works, goods or services falling partly within the application of these Regulations but with the other part not being within

the application of either these Regulations, the Public Contracts Regulations 2006, the Utilities Contracts Regulations 2006 the Public Contracts (Scotland) Regulations 2006 or the Utilities Contracts (Scotland) Regulations 2006 and the award of a single contract or the conclusion of a single framework agreement is justified for objective reasons, the award of the contract or the conclusion of the framework agreement is not subject to these Regulations.

(6) A contracting authority must not award a single contract or conclude a single framework agreement for the purpose of avoiding the application of these Regulations, the Public Contracts Regulations 2006, the Utilities Contracts Regulations 2006, the Public Contracts (Scotland) Regulations 2006 or the Utilities Contracts (Scotland) Regulations 2006 where applicable.

### **General exclusions**

7.—(1) These Regulations do not apply to the seeking of offers in relation to a proposed contract or framework agreement—

- (a) where the application of these Regulations would oblige the United Kingdom to supply information the disclosure of which it considers contrary to the essential interests of its security;
- (b) for the purposes of intelligence activities;
- (c) where the contract is to be awarded or the framework agreement is to be concluded in the framework of a cooperative programme based on research and development, conducted jointly by at least two member States for the development of a new product and, where applicable, the later phases of all or part of the life cycle of the product;
- (d) where the contract is to be awarded or the framework agreement is to be concluded in a State which is not a member State, including a contract or framework agreement for a civil purchase, carried out when forces are deployed outside the territory of the EU where operational needs require them to be concluded with economic operators located in the area of operations;
- (e) which is governed by specific procedural rules—
  - (i) pursuant to an international agreement or arrangement concluded between the United Kingdom and a State which is not a member State;
  - (ii) pursuant to a concluded international agreement or arrangement relating to the stationing of troops and concerning the undertakings of a member State or a State which is not a member State; or
  - (iii) of an organisation, of which only States are members (an “international organisation”) or of which only States or international organisations are members, purchasing for its purposes;
- (f) which must be awarded by a member State in accordance with specific procedural rules of an organisation referred to in sub-paragraph (e)(iii);
- (g) 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;
- (h) where a government is to award a contract to, or conclude a framework agreement with, another government relating to—
  - (i) the supply of military equipment or sensitive equipment;
  - (ii) work, works or services directly linked to such equipment; or
  - (iii) work, works or services specifically for military purposes, or sensitive work or works or sensitive services;
- (i) for arbitration or conciliation services;



- (j) for financial services, with the exception of insurance services;
- (k) for employment and other contracts of service; or
- (l) 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.

(2) For the purposes of paragraph (1)(h) “government” means the State, regional or local government of a member State or a State which is not a member State.

### **Reserved contracts**

8.—(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 contract award procedure or framework agreement 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 contract or framework agreement in accordance with paragraph (2), it shall follow the contract award procedures set out in these Regulations.

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

### **Thresholds**

9.—(1) These Regulations do not apply to the seeking of offers in relation to a proposed contract or framework agreement where the estimated value of the contract or framework agreement (net of value added tax) at the relevant time is less than the relevant threshold.

(2) For the purposes of paragraph (1) the relevant threshold is the sum mentioned in—

- (a) Article 8(a) of the Defence and Security Procurement Directive in the case of a supply contract or a services contract; and
- (b) Article 8(b) of the Defence and Security Procurement Directive in the case of a works contract.

(3) The reference in paragraph (2) to the Defence and Security Procurement Directive is a reference to that Directive as amended from time to time.

(4) 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 Defence and Security Procurement Directive as published from time to time in the Official Journal.

(5) For the purposes of paragraph (1) the estimated value of a contract shall be the value of the total consideration payable, net of value added tax, (calculated in accordance with this regulation), which the contracting authority expects to be payable under the contract.

(6) In determining the value of the total consideration which the contracting authority expects to be payable under a 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; and
- (e) fees, commission or other forms of remuneration payable for design services.

(7) For the purposes of paragraph (1) the estimated value of a 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.

(8) For the purposes of paragraph (1) the estimated value of a services contract which does not indicate a total price is—

- (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.

(9) Subject to paragraphs (10) and (13), 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 paragraph (1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.

(10) Paragraph (9) does not apply to any contract (unless the contracting authority chooses to apply that paragraph to a contract) if the contract has an estimated value of less than—

- (a) 80,000 euro for a services contract or a supply contract, or
- (b) 1,000,000 euro for a 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.

(11) Subject to paragraph (13), 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 paragraph (1) of the contract shall be the amount calculated under paragraph (12).

(12) The contracting authority shall calculate the amount referred to in paragraph (11) either—

- (a) by taking the aggregate of the value of the consideration payable 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 and cost of the goods to be purchased or hired or services to be provided in the period of 12 months commencing with the relevant time; or
  - (b) by estimating the aggregate of the value of the consideration which the 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 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 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.
- (13) Notwithstanding paragraphs (9) and (11), in relation to a supply contract or a 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 paragraphs (9) and (12) 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 supply contract or a services contract which was or is required for the sole purpose of that unit.
- (14) Where a contracting authority intends to provide any goods to the economic operator awarded a works contract for the purpose of carrying out that contract, the value of the consideration of the works contract for the purposes of paragraphs (5) and (9) shall be taken to include the estimated value at the relevant time of those goods.
- (15) The relevant threshold for the purposes of paragraph (1) for a framework agreement is the threshold for—
- (a) a works contract, where the framework agreement relates to the carrying out of work or works;
  - (b) a services contract, where the framework agreement relates to the provision of services; or
  - (c) a supply contract, where the framework agreement relates to the purchase or hire of goods.
- (16) The estimated value of a framework agreement 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.
- (17) A contracting authority shall not enter into separate contracts nor exercise a choice under a valuation method with the intention of avoiding the application of these Regulations to those contracts.
- (18) The relevant time for the purposes of paragraphs (1), (12) and (14) 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.

### **Confidential information**

**10.**—(1) Subject to the provisions of these Regulations and in accordance with the law of any part of the United Kingdom to which the contracting authority is subject and subject to contractually acquired rights, 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.

### **Classified information**

**11.**—(1) A contracting authority may impose on an economic operator requirements aimed at protecting classified information which the contracting authority communicates to the economic operator throughout the tendering and contracting procedure.

(2) A contracting authority may require that an economic operator provides for the compliance by its sub-contractors with requirements imposed upon the economic operator under paragraph (1).