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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 89**

**The Utilities Contracts (Scotland) Regulations 2012**

**PART 5**

**THE AWARD OF A CONTRACT**

**Rejection of third country tenders – supply contracts**

**31.—(1)** In this regulation—

“an offer of third country origin” means an offer to enter a supply contract under which more than 50% of the total value of the goods offered originate in States with which the Communities have not concluded, multilaterally or bilaterally, an agreement ensuring comparable and effective access for undertakings in member States to the markets of those States or in States to which the benefit of the provisions of the Utilities Directive has not been extended; and

“goods” includes software used in telecommunications network equipment.

(2) The origin of the goods must be determined in accordance with Council Regulation No 450/2008 of the European Parliament and of the Council laying down the Community Customs Code (Modernised Customs Code)<sup>(1)</sup>.

(3) Notwithstanding regulation 30, a utility need not accept an offer of third country origin.

(4) Notwithstanding regulation 30, where an offer of third country origin is equivalent to an offer which is not of third country origin a utility must not accept the offer of third country origin unless not to accept that offer would oblige the utility to acquire—

- (a) goods having technical characteristics different from those of existing goods; or
- (b) an installation resulting in incompatibility, technical difficulties in operation and maintenance or disproportionate costs.

(5) In the case of a supply contract to be awarded on the basis of the offer which offers the lowest price, offers are equivalent for the purposes of paragraph (4) if their prices are to be treated as equivalent in accordance with paragraph (7).

(6) In the case of a supply contract to be awarded on the basis of the offer which is the most economically advantageous to the utility, offers are equivalent for the purposes of paragraph (4) if—

- (a) their prices are to be treated as equivalent in accordance with paragraph (7); and
- (b) disregarding any difference in price the offer which is not of third country origin is at least as economically advantageous to the utility as the offer of third country origin.

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

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<sup>(1)</sup> OJ L 145, 4.6.2008, p.1.