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SCOTTISH STATUTORY INSTRUMENTS

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**2012 No. 89**

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

**PART 1**

**GENERAL**

**Application**

5.—(1) These Regulations apply whenever a utility seeks offers in relation to a proposed supply contract, works contract, Part A services contract or a dynamic purchasing system other than a contract or dynamic purchasing system excluded from the operation of these Regulations by regulation 6, 7, 8, 9 or 11.

(2) Whenever a utility seeks offers in relation to a proposed Part B services contract other than one excluded from the operation of these Regulations by regulation 6, 7, 8, 9 or 11—

- (a) Part 1 and Parts 9 and 10 of these Regulations apply; and
- (b) the following provisions in Parts 2 to 8 apply—
  - (i) regulation 12 (technical specifications in contract documents);
  - (ii) regulation 32 (contract award notices);
  - (iii) regulation 38 (statistical and other reports);
  - (iv) regulation 39 (provision of reports); and
  - (v) regulation 40 (publication of notices).

(3) A utility must not enter into separate contracts with the intention of avoiding the application of these Regulations or the Public Contracts (Scotland) Regulations 2012, where applicable.

(4) Where a utility seeks offers in relation to a contract for the purpose of carrying out—

- (a) one or more activities specified in the second column of Schedule 1; and
- (b) one or more activities not specified in the second column of Schedule 1 but to which the Public Contracts (Scotland) Regulations 2012 apply,

and it is impossible, on objective grounds, to determine the activity for which the contract is principally intended, the utility must award the contract in accordance with the Public Contracts (Scotland) Regulations 2012.

(5) Where a utility seeks offers in relation to a contract for the purpose of carrying out—

- (a) one or more activities specified in the second column of Schedule 1; and
- (b) one or more activities not specified in the second column of Schedule 1 nor subject to the Public Contracts (Scotland) Regulations 2012,

and it is impossible, on objective grounds, to determine the activity for which the contract is principally intended, the utility must award the contract in accordance with these Regulations.