
STATUTORY INSTRUMENTS

1993 No. 3227

PUBLIC PROCUREMENT

**The Utilities Supply and Works Contracts
(Amendment) Regulations 1993**

<i>Made</i>	- - - -	<i>22nd December</i> <i>1993</i>
<i>Laid before Parliament</i>		<i>22nd December</i> <i>1993</i>
<i>Coming into Force</i>	- -	<i>13th January 1994</i>

The Treasury, being the Minister designated⁽¹⁾ for the purposes of section 2(2) of the European Communities Act 1972⁽²⁾ in relation to public procurement, in exercise of the powers conferred upon them by the said section 2(2) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

1. These Regulations may be cited as the Utilities Supply and Works Contracts (Amendment) Regulations 1993 and shall come into force on 13th January 1994.

2. The Utilities Supply and Works Contracts Regulations 1992⁽³⁾ shall be amended:—

(1) in regulation 6, by deleting the word “and” from the end of paragraph (f) and adding after paragraph (g) the following new paragraph—

“and (h) by a utility specified in Column 1 of Part S of Schedule 1 which engages in an activity specified in Column 2 of that Part of that Schedule where that activity is provided in a geographical area in which other persons are free to provide the service under the same conditions as the utility.”

(2) in regulation 8, by adding after paragraph (2) the following new paragraph—

“(3) A utility which relies on the exemption in paragraph (1) above shall—

(a) in respect of a supply or works contract awarded by it the value of which, calculated in accordance with regulation 9 below, exceeds 5,000,000 ECU, send to the Commission no later than 48 days after the award the following information—

(i) the name and address of the utility;

(ii) the nature of the contract, namely whether it is a supply or works contract and whether it is a framework agreement;

(1) S.I.1991/755.

(2) 1972 C.68.

(3) S.I. 1992/3279.

- (iii) a clear indication of the nature of the goods, work or works to be provided (for example, by using the Classification of Products by Activity);
 - (iv) whether the contract was advertised and, if so, in which publication and, if not, the procedure or method used to decide to whom the contract should be awarded;
 - (v) the number of offers received;
 - (vi) the date of the award of the contract;
 - (vii) the name and address of the person to whom the contract was awarded;
 - (viii) the value of the contract, calculated in accordance with regulation 9 below;
 - (ix) the expected duration of the contract;
 - (x) any share of the contract which has been, or may be, sub-contracted to which over 10% of the value of the consideration to be given under the contract is attributable;
 - (xi) in the case of a supply contract the country of origin of the goods and in the case of a works contract the principal country from which the contract is to be performed;
 - (xii) where the contract was awarded on the basis of the offer which was the most economically advantageous, the main criteria on which the decision was based; and—
 - (xiii) whether the contract was awarded to a person who offered a variant on the requirements specified in the contract documents; and
- (b) in respect of a supply contract awarded by it the value of which, calculated in accordance with regulation 9 below, equals or exceeds 400,000 ECU but does not exceed 5,000,000 ECU—
- (i) retain the information specified in sub-paragraph (a)(i) to (ix) above for not less than 4 years after the award; and
 - (ii) either—
 - (aa) if the Commission requests that information in relation to any such supply contract, forthwith send it to the Minister for onward transmission to the Commission; or
 - (bb) where no such request has been made, send that information to the Commission⁽⁴⁾ no later than 48 days after the end of the period of 3 months ending on the last day of March, June, September or December in which the contract was awarded.”;
- (3) in regulations 27(3) and 27(6), by inserting “8(3)(b)(ii)(a),” after “7(2),”;
- (4) in Column 2 of Part S of Schedule 1, by deleting the words “in a geographical area in which other persons are not free to provide the service under the same conditions as the utility”—
- (5) in Schedule 2, in subparagraph (e) of the definition of “private leased circuit”, by substituting for the words “subparagraph (a)” the words “subparagraph (b)”.

(4) The relevant department in the Commission is DGXV/b/4 whose address is 100 Ave. de Cortenbergh Brussels 1049.

22nd December 1993

Tim Wood
Irvine Patnick
Two of the Lords Commissioners of Her
Majesty's Treasury.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Utilities Supply and Works Contracts Regulations 1992 (“the principal Regulations”) which implement Council Directive [90/531/EEC](#) (OJ No L297, 29.10.90, p.1).

The principal Regulations lay down requirements with respect to the seeking of offers in relation to the award of supply and works contracts by certain entities (“utilities”) operating in the water, energy, transport and telecommunications sectors.

Regulation 8 of the principal Regulations, however, provides for an exemption from these requirements for utilities operating in the oil, gas, coal or other solid fuel sectors in certain circumstances.

Where a utility benefits from that exemption article 3(2)(b) of Council Directive [90/531/EEC](#) provides that the member State must ensure that such a utility communicates information relating to contracts awarded by it to the Commission under conditions defined by the Commission. Commission Decision [93/327/EEC](#) of 13th May 1993 (OJ No L129, 27.5.93, p.25) defines those conditions.

Regulation 2(2) implements article 3(2)(b) in accordance with that Decision. It adds a new provision to regulation 8 of the principal Regulations which imposes the requirements and specifies what information must be supplied to the Commission. It also specifies when the information must be supplied. Consequential amendments to the report laying requirements of the principal Regulations are also made (regulation 2(3)).

The Regulations also make certain other amendments to the principal Regulations. The exclusion from the principal Regulations of the operation of a network to provide a bus transport service to the public where other persons are free to provide the same service has been moved from Schedule 2 to join the other exclusions in regulation 6 (regulations 2(1) and (4)) and an erroneous reference to a sub-paragraph in the definition of “private leased circuits” in Schedule 2 of the principal Regulations has been corrected (regulation 2(5)).