
STATUTORY INSTRUMENTS

1995 No. 201

The Public Supply Contracts Regulations 1995

PART II

TECHNICAL SPECIFICATIONS

Technical Specifications in the Contract Documents

8.—(1) In this regulation—

“common technical specification” means a technical specification drawn up in accordance with a procedure recognised by the member States with a view to uniform application in all member States and which has been published in the Official Journal;

“European specification” means a common technical specification, a British standard implementing a European standard or a European technical approval;

“European standard” means a standard approved by the European Committee for Standardisation (“CEN”) or by the European Committee for Electrotechnical Standardisation (“CENELEC”) as a “European Standard (“EN”)” or a “Harmonisation Document (“HD”)” according to the Common Rules of those organisations;

“European technical approval” means an approval of the fitness for use of a product, issued by an approval body, designated for the purpose by a member State following a technical assessment of whether the product fulfils the essential requirements for building works, having regard to the inherent characteristics of the product and the defined conditions of application and use;

“standard” means a technical specification approved by a recognised standardising body for repeated and continuous application, compliance with which is in principle not compulsory; and

“technical specifications” means the technical requirements defining the characteristics required of goods (such as quality, performance, safety or dimensions and requirements in respect of quality assurance, terminology, symbols, tests and testing methods, packaging, marking and labelling) so that the goods are described objectively in a manner which will ensure that they fulfil the use for which they are intended by the contracting authority.

(2) If a contracting authority wishes to lay down technical specifications which the goods to be purchased or hired under a public supply contract must meet it shall specify all such technical specifications in the contract documents.

(3) Subject to paragraph (4) below, the technical specifications in the contract documents relating to a public supply contract shall be defined by reference to any European specifications which are relevant.

(4) A contracting authority may define the technical specifications referred to in paragraph (3) above other than by reference to relevant European specifications if—

(a) the contracting authority is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in the United Kingdom for the

goods to be purchased or hired under the contract (but only to the extent that such an obligation is compatible with Community obligations);

- (b) the relevant European specifications do not include provision for establishing conformity to, or it is technically impossible to establish satisfactorily that the goods to be purchased or hired under the contract do conform to, the relevant European specifications;
- (c) definition by reference to the relevant European specifications would conflict with the application of—
 - (i) Council Directive [86/361/EEC](#) on the initial stage of mutual recognition of type approval for telecommunication terminal equipment⁽¹⁾;
 - (ii) Council Decision [87/95/EEC](#) on standardisation in the field of information technology and telecommunications⁽²⁾; or
 - (iii) other Community obligations in specific service or goods areas;
- (d) subject to paragraph (5) below, application of the relevant European specifications would oblige the contracting authority to acquire goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties; or
- (e) the project for which the goods to be purchased or hired under the contract are required is of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

(5) A contracting authority may only define the technical specifications other than by reference to relevant European specifications on the grounds specified in paragraph 4(d) above where the contracting authority has a clearly defined and recorded strategy for changing over, within a set period, to European specifications.

(6) A contracting authority shall state in the contract notice which of the circumstances specified in paragraph (4)(b) to (e) above was the ground for defining the technical specifications other than by reference to European specifications, or, if it is impossible to include this information in the contract notice, the contracting authority shall specify it in the contract documents and shall in any event keep a record of this information which, if the Commission or any relevant State requests it, it shall send to the Treasury for onward transmission to the Commission or relevant State which requested it.

(7) In the absence of European specifications relevant to the supplies to be provided under a public supply contract, the technical specifications in the contract documents—

- (a) shall be defined by reference to British technical specifications recognised as complying with the basic requirements specified in any Council Directives on technical harmonisation in accordance with the procedures laid down in those directives and, in particular, in accordance with the procedures laid down in Council Directive [89/106/EEC](#) on the approximation of laws, regulations and administrative procedures in the member States relating to construction products⁽³⁾;
- (b) may be defined by reference to British technical specifications relating to design and method of calculation and execution of a work or works and use of materials and goods;
- (c) may be defined by reference to the following standards (and, if they are so defined, preference shall be given to the following standards in the order in which they are listed)—
 - (i) British standards implementing international standards;
 - (ii) other British standards and technical approvals; or
 - (iii) any other standards.

(1) OJNo. L217, 5.8.86, p.21 as amended by Council Directive [91/263/EEC](#) (OJ No. L128, 23.5.91, p.1).

(2) OJ No. L36, 7.2.87, p.31.

(3) OJ No. L40, 11.2.89, p.12.

(8) Subject to paragraph (10) below, the contract documents shall not include technical specifications which refer to goods of a specific make or source or to a particular process and which have the effect of favouring or eliminating particular goods or suppliers.

(9) Without prejudice to the generality of paragraph (8) above but subject to paragraph (10) references to trademarks, patents, types, origin or means of production shall not be incorporated into the technical specifications in the contract documents.

(10) Notwithstanding paragraphs (8) and (9) above, a contracting authority may incorporate the references referred to in paragraphs (8) and (9) above into the technical specifications in the contract documents if—

- (a) such references are justified by the subject of the contract, or
- (b) the goods to be purchased or hired under the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all suppliers, provided that the references are accompanied by the words “or equivalent”.