

2001 No. 2418

PUBLIC PROCUREMENT

The Utilities Contracts (Amendment) Regulations 2001

Made - - - - - *4th July 2001*

Laid before Parliament *5th July 2001*

Coming into force - - *26th July 2001*

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

Citation and commencement

1. These Regulations may be cited as the Utilities Contracts (Amendment) Regulations 2001 and shall come into force on 26th July 2001.

Interpretation

2. In these Regulations “the Utilities Regulations” shall mean the Utilities Contracts Regulations 1996(d).

Amendment of the Utilities Regulations

3.—(1) Regulation 2 of the Utilities Regulations (interpretation) shall be amended—

(a) in regulation 2(1),

(i) by inserting the following definition before the definition of “to award”—

““attestation system” means a system under which utilities may have their contract award procedures and practices within the scope of Council Directive 93/38/EEC(e) examined periodically by an independent person or body with a view to obtaining an attestation that at that time those procedures and practices are in conformity with these Regulations and the Community law to which they give effect;”;

(ii) by omitting the definition of “ECU”;

(iii) by inserting the following definitions after the definition of “goods”—

““Government Procurement Agreement” means the Agreement on Government Procurement between certain parties to the World Trade Organisation (WTO) Agreement signed in Marrakesh on 15th April 1994(f);

(a) S.I. 1991/755.

(b) 1972 c. 68.

(c) The powers remain exercisable by the Treasury as regards Scotland by virtue of section 57(i) of the Scotland Act 1998 (c. 46).

(d) S.I. 1996/2911.

(e) OJ No. L199, 9.8.1993, p. 84.

(f) Cm 2575. As at 1st January 2001, parties to the Government Procurement Agreement other than relevant States were Aruba, Canada, Hong Kong Special Administrative Region, Israel, Japan, Republic of Korea, Singapore, Switzerland and the United States of America.

“GPA” means the Government Procurement Agreement;”;

(b) by omitting regulation 2(3).

(2) Regulation 10 of the Utilities Regulations (thresholds) shall be amended—

(a) by replacing paragraph (2) with—

“(2) The relevant threshold for the purposes of paragraph (1) above in relation to a contract to be awarded by a utility specified in Part T of Schedule 1 is—

- (a) 600,000 euro for a supply or services contract; and
- (b) 5,000,000 euro for a works contract.”;

(b) by inserting the following paragraphs after paragraph (2)—

“(2A) The relevant threshold for the purposes of paragraph (1) above in relation to a contract to be awarded by a utility specified in Parts A to F, O, P, R or S of Schedule 1 is—

- (a) the euro equivalent of 400,000 special drawing rights for a supply contract;
- (b) for a services contract—
 - (i) the euro equivalent of 400,000 special drawing rights for a Part A services contract other than—
 - (aa) a contract for research and development services specified in category 8 of Part A of Schedule 4;
 - (bb) a contract for telecommunications services specified under CPC(a) references 7524, 7525 and 7526 within category 5 of Part A of Schedule 4;
 - (ii) 400,000 euro for a Part A services contract described in sub-paragraph (aa) or (bb) above or for a Part B services contract; and
- (c) the euro equivalent of 5,000,000 special drawing rights for a works contract.

(2B) The relevant threshold for the purposes of paragraph (1) above in relation to a contract to be awarded by a utility specified in Parts G to N or Q of Schedule 1 is—

- (a) 400,000 euro for a supply or services contract; or
- (b) 5,000,000 euro for a works contract.”; and
- (c) by adding the following paragraph—

“(20) The value in pounds sterling of any amount expressed in these Regulations in euro or in the euro equivalent of special drawing rights shall be calculated by reference to the rate for the time being applying for the purposes of Council Directive 93/38/EEC as published from time to time in the Official Journal(b).”.

(3) Regulation 14(2)(b) of the Utilities Regulations (prior indicative notices) shall be replaced by—

“(b) works contracts whose estimated value at the date of despatch of the notice is not less than—

- (i) 5,000,000 euro for a contract expected to be awarded by a utility specified in Part T of Schedule 1;
- (ii) the euro equivalent of 5,000,000 special drawing rights for a contract expected to be awarded by a utility specified in Parts A to F, O, P, R or S of Schedule 1.”.

(4) Regulation 15 of the Utilities Regulations (call for competition) shall be amended—

(a) by inserting the words “, including the information described in paragraph (3A) below,” after the words “detailed information” in sub-paragraph (c) of paragraph (3); and

(b) by inserting the following paragraph after paragraph (3)—

“(3A) The information referred to in paragraph (3)(c) above shall include—

- (a) the nature and quantity or extent of the goods, works or services to be supplied under the contract;
- (b) any options for further supplies, works or services and, if known, an estimate of the timing when such options may be exercised;

(a) CPC stands for the Central Product Classification of the United Nations, published in the United Kingdom by The Stationery Office, ISBN 9211613981.

(b) The rates are determined every two years in principle and published in the Official Journal. The calculation is based upon the average of the daily exchange rates between special drawing rights and the euro and between the euro and sterling over a period of 24 months preceding the determination.

- (c) in the case of recurring contracts for goods, works or services, their nature and quantity or extent, and, if known, the estimated date of the subsequent calls for competition for the goods, works or services to be supplied;
- (d) a statement of whether the contract is to be awarded using the restricted or the negotiated procedure;
- (e) any date for beginning or completing the delivery of goods or for performing works or services;
- (f) the address to which and the date by which an application to be invited to tender must be submitted and the language in which it must be submitted;
- (g) the address of the utility and any information needed to obtain specifications and other documents relating to the proposed contract;
- (h) any economic and technical requirements, financial guarantees and information required from providers;
- (i) the amount to be paid for and terms of payment in respect of the documents relating to the proposed contract; and
- (j) a statement of whether the utility is inviting offers for purchase, lease, rental or hire-purchase or involving more than one of these methods.”.

(5) Regulation 17 of the Utilities Regulations (time limits) shall be amended—

(a) by replacing paragraph (2) with—

“(2) Where—

- (a) the utility has published a periodic indicative notice in accordance with regulation 14(1);
- (b) the periodic indicative notice contained as much of the information specified in Parts II and III of Part A of Schedule 5 as was available at the time of publication; and
- (c) the periodic indicative notice was sent to the Official Journal at least 52 days and not more than 12 months before the date on which the contract notice was despatched,

the utility may substitute for the period of not less than 52 days specified in paragraph (1) above a shorter period of generally not less than 36 days and in any event not less than 22 days from the date of despatch of the contract notice, provided in each case that the period is sufficient to allow for effective tendering.”;

- (b) by substituting “37 days” for “five weeks” in paragraph (3);
- (c) by substituting “24 days” for “3 weeks” in paragraph (4); and
- (d) by adding the following paragraphs—

“(11) Tenders shall be submitted in writing either in person or by post, except that a utility may authorise another means of submission provided that the chosen means enables—

- (a) each tender to contain all the information necessary for its evaluation;
- (b) the confidentiality of tenders to be maintained pending their evaluation; and
- (c) tenders to be opened only after the time limit for their submission has expired.

(12) Where a utility has authorised another means of submission in accordance with paragraph (11) above, it may require either that the submission of the tender is confirmed in writing or that a copy of the tender is delivered to it in person or by post, in either case as soon as possible after the submission of the tender by another means.”.

(6) The following paragraph shall be inserted after regulation 18(1) of the Utilities Regulations (qualification system for providers)—

“(1A) The utility shall permit providers to apply for qualification under the system at any time.”.

(7) Regulation 23(2) of the Utilities Regulations (contract award notice) shall be amended by substituting “paragraphs 6, 9 and 11” for “paragraphs 6 and 9”.

(8) The following regulation shall be inserted after regulation 23 of the Utilities Regulations (contract award notice)—

“Information about contract awards

23A.—(1) A utility specified in Parts A to F, O, P, R or S of Schedule 1 shall promptly inform any provider who submitted an offer or who applied successfully to be included amongst the persons to be selected to tender for or to negotiate a contract of its decision in relation to the award of the contract and shall do so in writing if requested.

(2) Subject to paragraph (3) below, a utility specified in Parts A to F, O, P, R or S of Schedule 1 shall promptly after the date on which it receives a request in writing from any provider who was unsuccessful at any stage in the contract award procedure inform that provider of the reasons why he was unsuccessful and, if the provider submitted an admissible tender, the utility shall inform him of the characteristics and relative advantages of the successful tender as well as the name of the person awarded the contract.

(3) A utility may withhold any information to be provided in accordance with paragraph (2) above where the disclosure of such information would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of any person or might prejudice fair competition between providers.”.

(9) Regulation 27 of the Utilities Regulations (statistical and other reports) shall be amended by inserting the following paragraphs after paragraph (2)—

“(2A) Subject to paragraph (2B) below, a utility specified in Parts A to F, O, P, R or S of Schedule 1 shall, not later than 31st July in each year, send to the Minister a report specifying in relation to each contract awarded by it in the previous year (including contracts excluded or exempted from the application of some or all of these Regulations by regulations 6 to 10)—

- (a) the value (estimated if necessary) of the consideration payable under the contract;
- (b) the principal category of work or service carried out or to be carried out under the contract according to the nomenclature used in Schedule 3 or 4 or the type of goods purchased or hired or to be purchased or hired under the contract; and
- (c) the nationality of the person to whom the contract was awarded.

(2B) The report referred to in paragraph (2A) above need not include information concerning contracts for—

- (a) research and development services specified in category 8 of Part A of Schedule 4;
- (b) telecommunications services specified under CPC references 7524, 7525 and 7526 within category 5 of Part A of Schedule 4; or
- (c) the services specified in Part B of Schedule 4.”.

(10) Regulation 31(1) (design contests) shall be replaced by—

“(1) This regulation shall apply to a design contest if it is organised as part of a procedure leading to the award of a services contract other than a contract excluded from the operation of these Regulations by regulation 6, 7 or 8 whose estimated value (net of value added tax) is not less than the relevant threshold described in paragraph (1B) below.

(1A) This regulation shall apply to a design contest whether or not it is organised as part of a procedure leading to the award of a services contract if—

- (a) the contest is conducted for the purpose of carrying out an activity specified in any Part of Schedule 1 in which the utility is specified; and
- (b) the aggregate value of the prizes or payments for the contest is not less than the relevant threshold described in paragraph (1C) below.

(1B) The relevant threshold for the purpose of paragraph (1) above is—

- (a) 600,000 euro in relation to a services contract to be awarded by a utility specified in Part T of Schedule 1;
- (b) in relation to a services contract to be awarded by a utility specified in Parts A to F, O, P, R or S of Schedule 1—
 - (i) the euro equivalent of 400,000 special drawing rights for a Part A services contract other than—
 - (aa) a contract for research and development services specified in category 8 of Part A of Schedule 4;

- (bb) a contract for telecommunications services specified under CPC references 7524, 7525 and 7526 within category 5 of Part A of Schedule 4;
 - (ii) 400,000 euro for a Part A services contract described in sub-paragraph (aa) or (bb) above or for a Part B services contract; and
 - (c) 400,000 euro in relation to a services contract to be awarded by a utility specified in Parts G to N or Q of Schedule 1.
- (1C) The relevant threshold for the purpose of paragraph (1A) above is—
- (a) 600,000 euro in relation to a contest to be conducted by a utility specified in Part T of Schedule 1;
 - (b) in relation to a contest to be conducted by a utility specified in Parts A to F, O, P, R or S of Schedule 1—
 - (i) the euro equivalent of 400,000 special drawing rights for a supply contract;
 - (ii) the euro equivalent of 400,000 special drawing rights for a Part A services contract other than—
 - (aa) a contract for research and development services specified in category 8 of Part A of Schedule 4;
 - (bb) a contract for telecommunications services specified under CPC references 7524, 7525 and 7526 within category 5 of Part A of Schedule 4; or
 - (iii) 400,000 euro for a Part A services contract described in sub-paragraph (aa) or (bb) above or for a Part B services contract; and
 - (c) 400,000 euro in relation to a contest to be conducted by a utility specified in Parts G to N or Q of Schedule 1.”.
- (11) The following regulation shall be inserted after regulation 31 of the Utilities Regulations (design contests)—

“Attestation

31A.—(1) A utility which has recourse to an attestation system and obtains an attestation in accordance with Articles 4 and 5 of Directive 92/13/EEC(a) from an independent person or body accredited in a relevant State for the purpose of attestation in accordance with Article 6 of that Directive may include the following statement in a notice sent to the Official Journal for publication pursuant to regulations 14(1), 15(2)(b), 18(12) and 23(1)—

“The contracting entity has obtained an attestation in accordance with Council Directive 92/13/EEC that, on . . . , its contract award procedures and practices were in conformity with Community law and the national rules implementing that law.”

(2) An attestation system established in a relevant State in accordance with the European Attestation Standard(b) shall be presumed to be in accordance with Articles 4 to 6 of Directive 92/13/EEC.”.

(12) Regulation 32 of the Utilities Regulations (enforcement of obligations) shall be amended—

(a) by inserting the following paragraphs after paragraph (1)—

“(1A) The duty owed to a provider pursuant to paragraph (1) above, except in relation to—

- (a) a Part B services contract;
- (b) a contract for research and development services specified in category 8 of Part A of Schedule 4; and
- (c) a contract for telecommunications services specified under CPC references 7524, 7525 and 7526 within category 5 of Part A of Schedule 1,

shall be a duty owed also to a GPA provider.

(a) OJ No. L387, 29.10.1990, p. 1.

(b) The European Attestation Standard EN 45503:1996D for the assessment of contract award procedures and practices of entities operating in the water, energy, transport and telecommunications sectors was prepared under the mandate of the Commission of the European Communities and of the European Free Trade Association. It has been adopted as British Standard BS: EN 4550.

(1B) References to a “provider” in paragraphs (2), (4), (7) and (8) below shall be construed as including a reference to a GPA provider.”;

(b) by inserting the following words after the words “pursuant to paragraph (1)” in paragraphs (2), (4)(a), (5), (6) and (7)-

“or paragraph (1A)”;

(c) by adding the following paragraph—

“(10) In this regulation—

(a) a “GPA provider” shall mean a person from a GPA State who has sought, or who seeks, or would have wished, to be the person to whom the contract is awarded;

(b) a “GPA State” shall mean any country other than a relevant State which at the relevant time is a signatory to the GPA and has agreed with the European Community that the GPA shall apply to a contract of the type to be awarded(a); and

(c) “relevant time” shall mean—

(i) if the utility selects providers to tender for or to negotiate the contract in accordance with a qualification system established in accordance with regulation 18, the date on which the selection commences; or

(ii) if the utility satisfies the requirement that there be a call for competition by indicating the intention to award the contract in a periodic indicative notice in accordance with regulation 15(2)(a)(i), the date on which the notice is sent to the Official Journal; or

(iii) in any other case, the date on which a contract notice would be sent to the Official Journal if the requirement that there be a call for competition applied and the utility decided to satisfy that requirement by sending such a notice.”.

(13) Schedule 1 to these Regulations (which substitutes a new Schedule 1 to the Utilities Regulations) shall have effect.

(14) Schedule 2 to these Regulations (which substitutes a new Schedule 2 to the Utilities Regulations) shall have effect.

(15) Schedule 3 to these Regulations (which substitutes a new Schedule 5 to the Utilities Regulations) shall have effect.

John Heppell
Anne McGuire

4th July 2001

Two of the Lords Commissioners of Her Majesty’s Treasury

(a) Information on the detailed application of the GPA under bilateral agreements between the EU and other signatories is maintained in the annexes and general notes in Appendix I to the GPA. Access to this information is available through the WTO website at www.wto.org.

Schedule 1 to the Utilities Regulations shall be replaced by:—

“SCHEDULE 1

Regulation 3

UTILITIES AND ACTIVITIES

<i>Utility</i>	<i>Activity</i>
PART A	
A company holding an appointment as a water undertaker or a sewerage undertaker under the Water Industry Act 1991 (a)	1. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of drinking water.
A water and sewerage authority established by section 62 of the Local Government etc (Scotland) Act 1994 (b)	2. Hydraulic engineering, irrigation or land drainage, but only if more than 20% of the total volume of water made available by such activity is intended for the supply of drinking water.
The Department for Regional Development (Northern Ireland).	3. The disposal or treatment of sewage.
PART B	
A relevant person not specified in Part C.	4. The supply of drinking water to a network referred to in paragraph 1 above.
Any other person not specified in Part C who supplies drinking water to a network which is referred to in paragraph 1 above and which is provided or operated by a person specified in Part A.	
PART C	
A relevant person other than a public authority who produces drinking water because its consumption is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 1 above.	5. The supply of drinking water to a network referred to in paragraph 1 above but only if the drinking water supplied in the period of 36 months ending at the relevant time as defined in regulation 10(19) above has exceeded 30% of the total produced by the utility in that period.
Any other person who is not a public authority, who produces drinking water because its consumption is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 1 above and which is provided or operated by a person specified in Part A.	
PART D	
A person licensed under section 6 of the Electricity Act 1989 (c)	6. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of electricity.
A person licensed under article 10(1) of the Electricity (Northern Ireland) Order 1992 (d) .	

(a) 1991 c. 56.

(b) 1994 c. 39.

(c) 1989 c. 29.

(d) S.I. 1992/231 (N.I.1).

<i>Utility</i>	<i>Activity</i>
	PART E
A relevant person not specified in Part F.	7. The supply of electricity to a network referred to in paragraph 6 above.
Any other person not specified in Part F who supplies electricity to a network which is referred to in paragraph 6 above and which is provided or operated by a person specified in Part D.	
	PART F
A relevant person other than a public authority who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network referred to in paragraph 6 above.	8. The supply of electricity to a network referred to in paragraph 6 above but only if the electricity supplied in the period of 36 months ending at the relevant time as defined in regulation 10(19) above has exceeded 30% of the total produced by the utility in that period.
Any other person who is not a public authority, who produces electricity because its use is necessary for the purpose of carrying out an activity not specified in the second column of this Schedule and who supplies only the excess to a network which is referred to in paragraph 6 above and which is provided or operated by a person specified in Part D.	
	PART G
A public gas transporter as defined in section 7(1) of the Gas Act 1986(a).	9. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of gas.
A person declared to be an undertaker for the supply of gas under article 8 of the Gas (Northern Ireland) Order 1996(b).	
	PART H
A relevant person not specified in Part I.	10. The supply of gas to a network referred to in paragraph 9 above.
Any other person not specified in Part I who supplies gas to a network which is referred to in paragraph 9 above and which is provided or operated by a person specified in Part G.	
	PART I
A relevant person other than a public authority who produces gas only as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies gas for the sole purpose of the economic exploitation of the production to a network referred to in paragraph 9 above.	11. The supply of gas to a network referred to in paragraph 9 above but only if the total consideration payable in the period of 36 months ending at the relevant time as defined in regulation 10(19) above on account of such supply has exceeded 20% of the total turnover of the utility in that period.
Any other person who is not a public authority, who produces gas only as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies gas for the sole purpose of the economic exploitation of the production to a network which is referred to in paragraph 9	

(a) 1986 c. 44; section 7(1) was amended by section 5 of the Gas Act 1995 (c. 45).
(b) S.I. 1996/275 (N.I.2).

<i>Utility</i>	<i>Activity</i>
above and which is provided or operated by a person specified in Part G.	
PART J	
A local authority.	12. The provision or operation of a fixed network which provides or will provide a service to the public in connection with the production, transport or distribution of heat.
A person licensed under section 6(1)(a) of the Electricity Act 1989(a) whose licence includes the provisions referred to in section 10(3) of that Act.	
The Northern Ireland Housing Executive.	
PART K	
A relevant person not specified in Part L.	13. The supply of heat to a network referred to in paragraph 12 above.
Any other person not specified in Part L who supplies heat to a network which is referred to in paragraph 12 above and which is provided or operated by a person specified in Part J.	
PART L	
A relevant person other than a public authority who produces heat as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies heat for the sole purpose of the economic exploitation of the production to a network referred to in paragraph 12 above.	14. The supply of heat to a network referred to in paragraph 12 above but only if the total consideration payable in the 36 months ending at the relevant time as defined in regulation 10(19) above on account of such supply has exceeded 20% of the total turnover of the utility in that period.
Any other person who is not a public authority, who produces heat only as the unavoidable consequence of carrying out an activity not specified in the second column of this Schedule and who supplies heat for the sole purpose of the economic exploitation of the production to a network which is referred to in paragraph 12 above and which is provided or operated by a person specified in Part J.	
PART M	
A person operating by virtue of a licence granted or having effect as if granted under the Petroleum Act 1998(b).	15. The exploitation of a geographical area for the purpose of exploring for or extracting oil or gas.
A person licensed under the Petroleum (Production) Act (Northern Ireland) 1964(c).	
PART N	
Any licensed operator (within the meaning of the Coal Industry Act 1994)(d).	16. The exploitation of a geographical area for the purposes of exploring for or extracting coal or other solid fuel.
The Department of Enterprise, Trade and Investment (Northern Ireland).	
A person operating by virtue of a prospecting licence, a mining lease, a mining licence or a mining permission as defined by section 57(1) of	

(a) 1989 c. 29.

(b) 1998 c. 17.

(c) 1964 c. 28 (N.I.).

(d) 1994 c. 21.

<i>Utility</i>	<i>Activity</i>
the Mineral Development Act (Northern Ireland) 1969(a).	
	PART O
A local authority.	17. The exploitation of a geographical area for the purpose of providing airport or other terminal facilities to carriers by air.
An airport operator within the meaning of the Airports Act 1986(b) who has the management of an airport subject to economic regulation under Part IV of that Act.	
Highland and Islands Airports Limited.	
An airport operator within the meaning of the Airports (Northern Ireland) Order 1994(c).	
Any other relevant person.	
	PART P
A harbour authority within the meaning of section 57 of the Harbours Act 1964(d).	18. The exploitation of a geographical area for the purpose of providing maritime or inland port or other terminal facilities to carriers by sea or inland waterway.
British Waterways Board.	
A local authority.	
A harbour authority as defined by section 38(1) of the Harbours Act (Northern Ireland) 1970(e).	
Any other relevant person.	
	PART Q
Railtrack plc.	19. The operation of a network providing a service to the public in the field of transport by railway.
Eurotunnel plc.	
Northern Ireland Transport Holding Company.	
Northern Ireland Railways Company Limited.	
London Regional Transport.	
London Underground Limited.	
Transport for London.	
A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999(f).	
Strathclyde Passenger Transport Executive.	
Greater Manchester Passenger Transport Executive.	
Tyne and Wear Passenger Transport Executive.	
Brighton Borough Council.	
South Yorkshire Passenger Transport Executive.	
South Yorkshire Supertram Limited.	
Any other relevant person.	
	PART R
Transport for London.	20. The operation of a network providing a service to the public in the field of transport by

(a) 1969 c. 35 (N.I.).

(b) 1986 c. 31.

(c) S.I. 1994/426 (N.I.1).

(d) 1964 c. 40.

(e) 1970 c. 1 (N.I.).

(f) 1999 c. 29.

<i>Utility</i>	<i>Activity</i>
<p>A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999.</p> <p>Greater Manchester Passenger Transport Executive.</p> <p>Blackpool Transport Services Limited.</p> <p>Conwy County Borough Council.</p> <p>South Yorkshire Passenger Transport Executive.</p> <p>South Yorkshire Supertram Limited.</p> <p>Any other relevant person.</p>	<p>automated systems, tramway, trolleybus, or cable.</p>

PART S

<p>Transport for London.</p> <p>A subsidiary of Transport for London within the meaning of section 424(1) of the Greater London Authority Act 1999.</p> <p>A person who provides a London local service as defined in section 179(1) of the Greater London Authority Act 1999 in pursuance of an agreement entered into by Transport for London under section 156(2) of that Act or in pursuance of a transport subsidiary's agreement as defined in section 169 of that Act.</p> <p>Northern Ireland Transport Holding Company.</p> <p>A person who holds a road service licence under section 4(1) of the Transport Act (Northern Ireland) 1967^(a) which authorises him to provide a regular service within the meaning of that licence.</p> <p>Any other relevant person.</p>	<p>21. The operation of a network providing a service to the public in the field of transport by bus.</p>
---	---

PART T

<p>A public telecommunications operator under the Telecommunications Act 1984^(b).</p>	<p>22. The provision or operation of a public telecommunications network.</p> <p>23. The provision of one or more public telecommunications services.”.</p>
--	---

(a) 1967 c. 37 (N.I.).
(b) 1984 c. 12.

Schedule 2 to the Utilities Regulations shall be replaced by—

“SCHEDULE 2

Regulations 2(1) and 4(2)

EXTENSION TO NON MEMBER STATES

<i>Relevant States</i>	<i>Agreement with the European Union which extend the provisions relating to public procurement to the relevant State</i>	<i>Statutory provisions designating the agreements as European Treaties</i>
1. Bulgaria	Europe Agreement (OJ No. L358, 31.12.94, p.2)	S.I. 1994/758
2. The Czech Republic	Europe Agreement (OJ No. L360, 31.12.94, p.2)	S.I. 1994/759
3. Estonia	Europe Agreement (OJ No. L68, 9.03.98, p.3)	S.I. 1997/269
4. Hungary	Europe Agreement (OJ No. L347, 31.12.93, p.2)	S.I. 1992/2871
5. Iceland	European Economic Area Agreement ^(a)	European Economic Area Act 1993 ^(b) section 1.
6. Latvia	Europe Agreement (OJ No. L26, 2.02.98, p.2)	S.I. 1997/270
7. Liechtenstein	European Economic Area Agreement	European Economic Area Act 1993, section 1.
8. Lithuania	Europe Agreement (OJ No. L51, 20.02.98, p.3)	S.I. 1997/271
9. Norway	European Economic Area Agreement	European Economic Area Act 1993, section 1.
10. Poland	Europe Agreement (OJ No. L348, 31.12.94, p.2)	S.I. 1992/2872
11. Romania	Europe Agreement (OJ No. L357, 31.12.94, p.2)	S.I. 1994/760
12. Slovakia	Europe Agreement (OJ No. L359, 31.12.94, p.2)	S.I. 1994/761
13. Slovenia	Europe Agreement (OJ No. L51, 26.02.99, p.3)	S.I. 1998/1062

(a) Cmnd 2073 as adjusted by the Protocol signed in Brussels on 17th March 1993 (Cmnd 2183).
(b) 1993 c. 51.”.

Schedule 5 to the Utilities Regulations shall be replaced by—

“SCHEDULE 5

Regulations 14(1), 15(2)(b),
18(12), 23(1) and 31

FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL JOURNAL

PART A

PERIODIC INDICATIVE NOTICE

I. To be completed in any case

1. The name, address, telegraphic address, telephone number, telex and facsimile number of the utility and of the service from which additional information may be obtained.
2. (a) For supply contracts: for each type of goods or services the total quantity or value to be supplied under the contract(s);
(b) For works contracts: the nature and extent of the services to be provided, the general characteristics of the work or, where relevant, of any lots by reference to the work;
(c) For service contracts: the intended total quantity or value to be provided in each of the service categories listed in Part A of Schedule 4.
3. Date of despatch of the notice.
4. Any other relevant information.

II. Information to be supplied where the notice is used to call for competition or permits reduction of the deadlines for the receipt of candidatures or tenders.

5. A reference to the fact that interested providers must advise the utility of their interest in the contract(s).
6. Deadline for the receipt of applications for an invitation to tender.

III. Information to be supplied, so far as available, where the notice is used to call for competition or permits reduction of the deadlines for the receipt of candidatures or tenders.

7. Nature and quantity of the goods to be supplied or general nature of the work or category of service within the meaning of Part A of Schedule 4 and description (CPC classification)(a), stating if framework agreement(s)(b) are envisaged, including, where applicable, any options for further supplies, works or services, and, if known, an estimate of the timing when such options may be exercised. In the case of recurring contracts, also, if known, the estimated date(s) of the subsequent calls for competition.
8. State whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.
9. Time limits for delivery or, completion or, in the case of a services contract, duration, and, as far as possible, for starting.
10. (a) Address to which interested providers should send their expressions of interest in writing.
(b) Final date for receipt of expressions of interest.
(c) Language(s) authorised for the presentation of candidatures or tenders.
11. Standards of economic and financial standing and technical capacity, and financial and technical guarantees required of providers.
12. (a) Provisional date, if known, for commencing the procedures for awarding the contract(s).
(b) Type of award procedure (restricted or negotiated).
(c) The amount of and payment details for any sum to be paid to obtain documents concerning the consultation.

(a) CPC stands for Central Product Classification of the United Nations, published in the United Kingdom by The Stationery Office; ISBN 9211613981.

(b) In accordance with regulation 11.

PART B

OPEN PROCEDURES NOTICE

1. The name, address, telegraphic address, telephone number, telex and facsimile numbers of the utility.

2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement)(a).

Category of service within the meaning of Schedule 4 and description (CPC classification).

Where applicable, state whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.

3. Place of delivery, site or place of performance of services.

4. For supplies and works—

- (a) Nature and quantity of the goods to be supplied, including, where applicable, any options for further supplies and, if known, an estimate of the timing when such options may be exercised and in the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition; or the nature and extent of the services to be provided and general nature of the work;
- (b) Indication of whether suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and the possibility of tendering for one, for several or for all of the lots;
- (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services—

- (a) Nature and quantity of the services to be supplied, including, where applicable, any options for further services and, if known, an estimate of the timing when such options may be exercised. In the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition;
- (b) Indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
- (c) Reference to the law, regulation or administrative provision;
- (d) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;
- (e) Indication whether service providers can tender for some or all of the services concerned.

6. Authorisation to submit variants.

7. Derogation from the use of European specifications, in accordance with regulation 12(4).

8. Time limits for delivery or completion or, in the case of a services contract, duration, and, as far as possible, for starting.

9. (a) Name and address from which the contract documents and additional documents may be requested.

(b) Where applicable, the amount and terms of payment of the sum to be paid to obtain such documents.

10. (a) The final date for receipt of tenders.

(b) The address to which they must be sent.

(c) The language(s) in which they must be drawn up.

(a) In accordance with regulation 11.

11. (a) Where applicable, the persons authorised to be present at the opening of tenders.
(b) The date, time and place of such opening.
12. Any deposits and guarantees required.
13. Main terms concerning financing and payment and/or references to the relevant provisions.
14. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
15. Minimum standards of economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
16. Period during which the tenderer is bound to keep open his tender.
17. Criteria for the award of the contract. Criteria other than that of the lowest price shall be mentioned where they do not appear in the contract documents.
18. Other information.
19. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
20. Date of despatch of the notice.

PART C

RESTRICTED PROCEDURES NOTICE

1. The name, address, telegraphic address, telephone number, telex and facsimile numbers of the utility.

2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement)(a).

Category of service within the meaning of Schedule 4 and description (CPC classification).

Where applicable, state whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.

3. Place of delivery, site or place of performance of services.

4. For supplies and works—

- (a) Nature and quantity of the goods to be supplied, including, where applicable, any options for further supplies and, if known, an estimate of the timing when such options may be exercised and in the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition; or the nature and extent of the services to be provided and general nature of the work;
- (b) Indication of whether suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of magnitude of the different lots and possibility of tendering for one, for several or for all of the lots;
- (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.

5. For services—

- (a) Nature and quantity of the services to be supplied, including, where applicable, any options for further services and, if known, an estimate of the timing when such options may be exercised. In the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition;
- (b) Indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;
- (c) Reference to the law, regulation or administrative provision;
- (d) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;

(a) In accordance with regulation 11.

- (e) Indication whether service providers can tender for some or all of the services concerned.
- 6. Authorisation to submit variants.
- 7. Derogation from the use of European specifications, in accordance with regulation 12(4).
- 8. Time limits for delivery or completion or, in the case of a services contract, duration and, as far as possible, for starting.
- 9. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
- 10.(a) The final date for receipt of requests to participate.
 - (b) The address to which they must be sent.
 - (c) The language(s) in which they must be drawn up.
- 11. The final date for despatch of invitations to tender.
- 12. Any deposits and guarantees required.
- 13. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
- 14. Information concerning the provider's personal position and minimum standards of economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
- 15. The criteria for the award of the contract where they are not mentioned in the invitation to tender.
- 16. Other information.
- 17. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
- 18. Date of despatch of the notice.

PART D

NEGOTIATED PROCEDURES NOTICE

- 1. The name, address, telegraphic address, telephone number, telex and facsimile numbers of the utility.
- 2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement)(a).

Category of service within the meaning of Schedule 4 and description (CPC classification).

Where applicable, state whether tenders are requested for purchase, lease, rental or hire-purchase or any combination of these.

- 3. Place of delivery, site or place of performance of services.
- 4. For supplies and works—
 - (a) Nature and quantity of the goods to be supplied, including, where applicable, any options for further supplies and, if known, an estimate of the timing when such options may be exercised and in the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition; or the nature and extent of the services to be provided and general nature of the work;
 - (b) Indication of whether suppliers can tender for some and/or all of the goods required. If, for works contracts, the work or the contract is subdivided into several lots, the order of size of the different lots and the possibility of tendering for one, for several or for all of the lots;
 - (c) For works contracts: information concerning the purpose of the work or the contract where the latter also involves the drawing-up of projects.
- 5. For services—
 - (a) Nature and quantity of the services to be supplied, including, where applicable, any options for further services and, if known, an estimate of the timing when such options may be exercised. In the case of recurring contracts, if known, the estimated date(s) of the subsequent calls for competition;
 - (b) Indication whether the execution of the service is by law, regulation, or administrative provision reserved to a particular profession;

(a) In accordance with regulation 11.

- (c) Reference to the law, regulation or administrative provision;
 - (d) Indication whether legal persons should indicate the names and professional qualifications of the staff to be responsible for the execution of the services;
 - (e) Indication whether service providers can tender for some or all of the services concerned.
6. Authorisation to submit variants.
 7. Derogation from the use of European specifications, in accordance with regulation 12(4).
 8. Time limits for delivery or completion or, in the case of a services contract, duration, and, as far as possible, for starting.
 9. Where applicable, the legal form to be taken by a grouping of providers to whom the contract is awarded.
 - 10.(a) The final date for receipt of requests to participate.
 - (b) The address to which they must be sent.
 - (c) The language(s) in which they must be drawn up.
 11. Any deposits and guarantees required.
 12. Main terms concerning financing and payment and/or references to the provisions in which these are contained.
 13. Information concerning the provider's personal position and minimum standards of economic and financial standing and technical capacity required of the provider to whom the contract is awarded.
 14. The criteria for the award of the contract where they are not mentioned in the invitation to tender or the contract documents.
 15. Where applicable, the names and addresses of providers already selected by the utility;
 16. Where applicable, date(s) of previous publications in the Official Journal.
 17. Other information.
 18. Where applicable, the date of publication in the Official Journal of the periodic indicative notice which refers to the contract.
 19. Date of despatch of the notice.

PART E

NOTICE ON THE EXISTENCE OF A QUALIFICATION SYSTEM

1. The name, address, telegraphic address, telephone number, telex and facsimile numbers of the utility.
2. Purpose of the qualification system (description of the goods, services or works or categories thereof to be procured through the system).
3. Conditions to be fulfilled by providers to obtain qualification pursuant to the system and the methods according to which each of those conditions will be verified. Where the description of such conditions and verification methods is voluminous and based on documents available to interested providers, a summary of the main conditions and methods and a reference to those documents shall be sufficient.
4. Period of validity of the qualification system and the formalities for its renewal.
5. Reference to the fact that the notice acts as the call for competition.
6. Address where further information and documentation concerning the qualification system can be obtained (if different from the address mentioned under 1).
7. Any other relevant information.

PART F
CONTRACT AWARD NOTICE

I. Information for publication in the Official Journal

1. Name and address of the utility.
2. Nature of the contract (supply, works or services; where applicable, state if it is a framework agreement)(a).
3. At least a summary indication of the nature and quantity of the goods, works or services provided.
4. (a) Form of the call for competition (notice on the existence of a qualification procedure; periodic indicative notice; contract notice).
(b) Date of publication of the notice in the Official Journal.
(c) In the case of contracts awarded without a prior call for competition, indication of whether it was regulation 5(2) or 16(1) which was relied upon and, in the case of the latter, which was the relevant sub-paragraph.
5. Award procedure (open, restricted or negotiated).
6. Number of tenders received.
7. Date of award of the contract.
8. Price paid for bargain purchases under regulation 16(1)(j).
9. Name and address of provider(s).
10. State, where applicable, whether the contract has been, or may be, sub-contracted.
11. Price paid or the prices of the highest and lowest offers taken into account in the award of the contract.
12. Optional information:
 - value and share of the contract which may be sub-contracted to third parties;
 - award criteria.

II. Information not intended for publication

13. Number of contracts awarded (where an award has been split between more than one provider).
14. Value of each contract awarded.
15. Country of origin of the product or service (EEC origin or non-EEC origin; if the latter, broken down by third country).
16. Was recourse made to the exceptions to the use of European specifications provided for under regulation 12(4)? If so, which?
17. Which award criteria was used (most economically advantageous; lowest price)?
18. Was the contract awarded to a bidder who submitted a variant, in accordance with regulation 21(6) and (7)?
19. Were any tenders excluded on the grounds that they were abnormally low, in accordance with regulation 21(6) and (7)?
20. Date of despatch of the notice.
21. In the case of contracts for services listed in Part B of Schedule 4, whether or not the utility agrees to publication of the notice.

(a) In accordance with regulation 11.

PART G
DESIGN CONTEST NOTICE

1. Name, address, telegraphic address, telephone, telex and facsimile numbers of the utility and of the service from which additional information may be obtained.
2. Project description.
3. Nature of contest: open or restricted.
4. In the case of open contests: final date for receipt of plans and designs.
5. In the case of restricted contests—
 - (a) the number of participants envisaged;
 - (b) where applicable, names of the participants already selected;
 - (c) criteria for the selection of participants;
 - (d) final date for receipt of requests to participate.
6. Where applicable, an indication of whether participation is reserved to a particular profession.
7. Criteria to be applied in the evaluation of projects.
8. Where applicable, names of the persons selected to be members of the jury.
9. Indication of whether the decision of the jury is binding on the utility.
10. Where applicable, number and value of the prizes.
11. Where applicable, details of payments to all participants.
12. Indication of whether follow-up contracts will be awarded to one of the winners.
13. Other information.
14. Date of despatch of the notice.

PART H
DESIGN CONTEST RESULT NOTICE

1. Name, address and telegraphic address, telephone, telex and facsimile numbers of the utility.
2. Project description.
3. Number of participants.
4. Number of participants established outside the United Kingdom.
5. Winner(s) of the contest.
6. Where applicable, the prize(s) awarded.
7. Other information.
8. Reference to publication of the design contest notice in the Official Journal.
9. Date of despatch of the notice.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement European Parliament and Council Directive 98/4/EC (OJ No. L101, 1.4.1998, p.1) in its entirety and for England, Wales, Scotland and Northern Ireland. Directive 98/4/EC amends Council Directive 93/38/EEC (OJ No. L199, 9.8.1993, p.84) co-ordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors. That Directive has been implemented for the United Kingdom by the Utilities Contracts Regulations 1996 (S.I. 1996/2911) (“the Utilities Regulations”). These Regulations also make provision for utilities whose contract award procedures and practices have been attested as being in conformity with Community law and national legislation under an attestation system established in accordance with Council Directive 92/13/EEC (OJ No. L397, 29.10.1990, p.1) to include a statement to that effect in the notices they publish in the Official Journal of the European Communities.

The Utilities Regulations specify the procedures to be followed by public bodies and bodies with special or exclusive rights carrying on an activity in the water, energy, transport and telecommunications sectors, called “utilities”, when they seek offers for certain contracts for the provision of works, services or supplies. The principal purpose of Directive 98/4/EC is to ensure that contractors, service-providers and suppliers in the European Union, called “providers”, are treated no less favourably under Council Directive 93/38/EEC than third country providers are treated under the WTO Government Procurement Agreement (GPA) when it applies. These Regulations amend the requirements of the Utilities Regulations accordingly. Information on the GPA (Cm 2572) and where it applies may be found on the WTO web-site (www.wto.org).

In the interests of transparency, these Regulations bring up to date the descriptions of the utilities to which the Utilities Regulations may apply and modify the lists of relevant States in Europe whose providers are owed duties of compliance under the Utilities Regulations, in the same way as providers who are nationals of or established in a Member State.

Where the GPA applies, these Regulations extend the benefit of the duty of compliance with the Utilities Regulations to contractors, service-providers and suppliers who are nationals of or established in third country signatories to the GPA.

Thus these Regulations make the following amendments to the Utilities Regulations:

- (a) The financial thresholds for the purpose of defining contracts to which the Utilities Regulations apply are modified to align them with the thresholds of the GPA (regulation 3(2));
- (b) The financial thresholds for prior indicative notices in relation to works contracts are modified (regulation 3(3));
- (c) The information to be sent to interested providers by a utility before inviting them to confirm their interest is expanded (regulation 3(4));
- (d) Utilities are permitted to reduce the time limit for the receipt of tenders provided certain conditions are met (regulation 3(5));
- (e) Utilities are permitted to authorise the submission of tenders by electronic means and other methods instead of submission in person or by post, provided certain conditions are met (regulation 3(5));
- (f) Requirements are specified about the information to be given by utilities when debriefing candidates and tenderers (regulation 3(8));
- (g) The reporting requirements with which utilities are required to comply are extended (regulation 3(9));
- (h) The financial thresholds for the regulation of design contests are modified (regulation 3(10));
- (i) Utilities which have recourse to an attestation system in a relevant State and obtain an attestation in accordance with Council Directive 92/13/EEC may include reference to the award of attestation in notices sent to the Official Journal (regulation 3(11));

- (j) The benefit of a utility's duty of compliance with the Utilities Regulations is extended to contractors, service-providers and suppliers respectively who are nationals of or established in GPA States, where the GPA applies (regulation 3(12));
- (k) The list of utilities to which the Regulations may apply is updated (regulation 3(13) and Schedule 1);
- (l) The list of relevant States whose providers are owed duties of compliance under the Utilities Regulations is updated (regulation 3(14) and Schedule 2);
- (m) Revised forms of model notices for publication in the Official Journal are provided (regulation 3(15) and Schedule 3).

S T A T U T O R Y I N S T R U M E N T S

2001 No. 2418**PUBLIC PROCUREMENT****The Utilities Contracts (Amendment) Regulations 2001**

£4.00

© Crown copyright 2001

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E1214 8/2001 635633 19585

ISBN 0-11-029811-X



9 780110 298115