

2003 No. 46

PUBLIC PROCUREMENT

**The Public Contracts (Works, Services and Supply) and
Utilities Contracts (Amendment) Regulations 2003**

Made - - - - - *14th January 2003*

Laid before Parliament *14th January 2003*

Coming into force - - *4th February 2003*

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 Public Contracts (Works, Services and Supply) and Utilities Contracts (Amendment) Regulations 2003 and shall come into force on 4th February 2003.

Interpretation

2. In these Regulations—

- (a) the “Public Works Regulations” shall mean the Public Works Contracts Regulations 1991(d);
- (b) the “Public Services Regulations” shall mean the Public Services Contracts Regulations 1993(e);
- (c) the “Public Supply Regulations” shall mean the Public Supply Contracts Regulations 1995(f); and
- (d) the “Utilities Regulations” shall mean the Utilities Contracts Regulations 1996(g).

(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. 1991/2680 which is amended by S.I. 1992/3279, S.I. 1995/201, S.I. 1996/2911, S.I. 1999/1042, S.I. 1999/1820 and S.I. 2000/2009.

(e) S.I. 1993/3228 which is amended by S.I. 1995/201, S.I. 1996/2911, S.I. 1999/1042, S.I. 1999/1820 and S.I. 2000/2009.

(f) S.I. 1995/201 which is amended by S.I. 1996/2911, S.I. 1999/1042, S.I. 1999/1820, S.I. 2000/2009 and section 1 of the Employment Rights (Dispute Resolution) Act 1998 c. 8.

(g) S.I. 1996/2911 which is amended by S.I. 2001/2418.

Amendment of the Public Works Regulations

3.—(1) Regulation 2(1) of the Public Works Regulations (interpretation) shall be amended by inserting the following definition after the definition of “working day”—

““the Works Directive” means Council Directive 93/37/EEC of 9th August 1993(a);”.

(2) Regulation 9 of the Public Works Regulations (prior information notices) shall be amended by substituting “the form of the prior information notice in Annex IV to the Works Directive” for “a form substantially corresponding to that set out in Part A of Schedule 2”.

(3) Regulation 11(2) of the Public Works Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Works Directive” for “a form substantially corresponding to that set out in Part B of Schedule 2”.

(4) Regulation 11(4)(b) of the Public Works Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Works Directive” for “Part B of Schedule 2”.

(5) Regulation 12(2) of the Public Works Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Works Directive” for “a form substantially corresponding to that set out in Part C of Schedule 2”.

(6) Regulation 12(12)(b) of the Public Works Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Works Directive” for “Part C (or, if appropriate, Part D) of Schedule 2”.

(7) Regulation 13(2) of the Public Works Regulations (the negotiated procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Works Directive” for “a form substantially corresponding to that set out in Part D of Schedule 2”.

(8) Regulation 21(1) of the Public Works Regulations (contract award notice) shall be amended by substituting “in the form of the contract award notice in Annex IV to the Works Directive” for “substantially corresponding to the form set out in Part E of Schedule 2”.

(9) Regulation 21(2) of the Public Works Regulations (contract award notice) shall be amended by substituting “the form of the contract award notice in Annex IV to the Works Directive” for “Part E of Schedule 2”.

(10) Regulation 22(1) of the Public Works Regulations (information about contract award procedures) shall be amended by inserting the words “of its decision” after the words “Office for Official Publications of the European Communities” and by inserting the words “its decision and of” after the words “negotiate the contract of”.

(11) Regulation 22 of the Public Works Regulations (information about contract award procedures) shall be amended by inserting the following after paragraph (3)—

“(3A) A contracting authority shall promptly inform any contractor who submitted an offer or who applied successfully to be included amongst the persons to be selected to tender for or to negotiate the contract of its decision in relation to the award of the contract and shall do so in writing if requested.”.

(12) Regulation 25(2) of the Public Works Regulations (public works concessions contracts) shall be amended by substituting “the form of the public works concession contract notice in Annex IV to the Works Directive” for “a form substantially corresponding to that set out in Part F of Schedule 2”.

(a) OJ L 199, 9.8.1993, p.54, as amended by Council Directive 97/52/EC (OJ L 328, 28.11.1997, p.1) and Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p.1) as corrected in a Corrigendum (OJ L 214, 9.8.2002, p.1). Annexes IV, V, and VI to Council Directive 93/37/EEC are replaced by the text of Annexes II, III and IV respectively to Commission Directive 2001/78/EC. Annex IV to Council Directive 93/37/EEC as replaced by Annex II to Commission Directive 2001/78/EC contains standard forms of prior information notice (standard form 2), contract notice (standard form 1) and contract award notice (standard form 3); Annex V as replaced by Annex III contains a standard form of public works concession contract notice (standard form 9); and Annex VI as replaced by Annex IV contains a standard form of contract notice for contracts to be awarded by a concessionaire (standard form 8). Corrections to the standard forms of notices are given in the Corrigendum, which also sets out the corrected standard forms in Annexes II, III and IV to Commission Directive 2001/78/EC in their entirety.

(13) Regulation 26(3)(a) of the Public Works Regulations (sub-contracting the work or works to be carried out under a public works concession contract) shall be amended by substituting “the form of the contract notice for contracts to be awarded by a concessionaire in Annex VI to the Works Directive” for “a form substantially corresponding to that set out in Part G of Schedule 2”.

(14) Schedule 2 to the Public Works Regulations shall be revoked.

Amendment of the Public Services Regulations

4.—(1) Regulation 2(1) of the Public Services Regulations (interpretation) shall be amended by inserting the following definition after the definition of “restricted procedure”—

““the Services Directive” means Council Directive 92/50/EEC of 24th July 1992(a);”.

(2) Regulation 9(1) of the Public Services Regulations (prior information notices) shall be amended by substituting “the form of the prior information notice in Annex III to the Services Directive” for “a form substantially corresponding to that set out in Part A of Schedule 2”.

(3) Regulation 11(2) of the Public Services Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex III to the Services Directive” for “a form substantially corresponding to that set out in Part B of Schedule 2”.

(4) Regulation 11(4)(b) of the Public Services Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex III to the Services Directive” for “Part B of Schedule 2”.

(5) Regulation 12(2) of the Public Services Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex III to the Services Directive” for “a form substantially corresponding to that set out in Part C of Schedule 2”.

(6) Regulation 12(12)(b) of the Public Services Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex III to the Services Directive” for “Part C (or, if appropriate, Part D) of Schedule 2”.

(7) Regulation 13(2) of the Public Services Regulations (the negotiated procedure) shall be amended by substituting “the form of the contract notice in Annex III to the Services Directive” for “a form substantially corresponding to that set out in Part D of Schedule 2”.

(8) Regulation 22(1) of the Public Services Regulations (contract award notice) shall be amended by substituting “in the form of the contract award notice in Annex III to the Services Directive” for “substantially corresponding to the form set out in Part E of Schedule 2”.

(9) Regulation 22(2) of the Public Services Regulations (contract award notice) shall be amended by substituting “the form of the contract award notice in Annex III to the Services Directive” for “Part E of Schedule 2”.

(10) Regulation 23(1) of the Public Services Regulations (information about contract award procedures) shall be amended by inserting the words “of its decision” after the words “Office for Official Publications of the European Communities” and by inserting the words “its decision and of” after the words “negotiate the contract of”.

(11) Regulation 23 of the Public Services Regulations (information about contract award procedures) shall be amended by inserting the following paragraph after paragraph (3)—

“(3A) A contracting authority shall promptly inform any service provider who submitted an offer or who applied successfully to be included amongst the persons to be selected to tender for or to negotiate the contract of its decision in relation to the award of the contract and shall do so in writing if requested.”.

(a) OJ L 209, 24.7.1992, p.1, as amended by Council Directive 97/52/EC (OJ L 328, 28.11.1997, p.1) and Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p.1) as corrected in a Corrigendum (OJ L 214, 9.8.2002, p.1). Annexes III and IV to Council Directive 92/50/EEC are replaced by the text of Annexes V and VI respectively to Commission Directive 2001/78/EC. Annex III to Council Directive 92/50/EEC as replaced by Annex V to Commission Directive 2001/78/EC contains standard forms of prior information notice (standard form 2), contract notice (standard form 1) and contract award notice (standard form 3); and Annex IV as replaced by Annex VI contains a standard form of design contest notice (standard form 10) and a standard form notice of the results of a design contest (standard form 11). Corrections to the standard forms of notices are given in the Corrigendum, which also sets out the corrected standard forms in Annexes V and VI to Commission Directive 2001/78/EC in their entirety.

(12) Regulation 24(2) of the Public Services Regulations (design contests) shall be amended by substituting “the form of the design contest notice in Annex IV to the Services Directive” for “a form substantially corresponding to that set out in Part F of Schedule 2”.

(13) Regulation 24(10) of the Public Services Regulations (design contests) shall be amended by substituting “in the form of the notice of the results of a design contest in Annex IV to the Services Directive” for “substantially corresponding to the form set out in Part G of Schedule 2”.

(14) Schedule 2 of the Public Services Regulations shall be revoked.

Amendment of the Public Supply Regulations

5.—(1) Regulation 2(1) of the Public Supply Regulations (interpretation) shall be amended by inserting the following definition after the definition of “supplier”—

““the Supply Directive” means Council Directive 93/36/EEC of 9th August 1993(a);”.

(2) Regulation 9(1) of the Public Supply Regulations (prior information notices) shall be amended by substituting “the form of the prior information notice in Annex IV to the Supply Directive” for “a form substantially corresponding to that set out in Part A of Schedule 3”.

(3) Regulation 11(2) of the Public Supply Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Supply Directive” for “a form substantially corresponding to that set out in Part B of Schedule 3”.

(4) Regulation 11(3A)(b) of the Public Supply Regulations (the open procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Supply Directive” for “Part B of Schedule 3”.

(5) Regulation 12(2) of the Public Supply Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Supply Directive” for “a form substantially corresponding to that set out in Part C of Schedule 3”.

(6) Regulation 12(11A)(b) of the Public Supply Regulations (the restricted procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Supply Directive” for “Part B of Schedule 3”.

(7) Regulation 13(2) of the Public Supply Regulations (the negotiated procedure) shall be amended by substituting “the form of the contract notice in Annex IV to the Supply Directive” for “a form substantially corresponding to that set out in Part D of Schedule 3”.

(8) Regulation 22(1) of the Public Supply Regulations (contract award notice) shall be amended by substituting “in the form of the contract award notice in Annex IV to the Supply Directive” for “substantially corresponding to the form set out in Part E of Schedule 3”.

(9) Regulation 22(2) of the Public Supply Regulations (contract award notice) shall be amended by substituting “the form of the contract award notice in Annex IV to the Supply Directive” for “Part E of Schedule 3”.

(10) Regulation 23(1) of the Public Supply Regulations (information about contract award procedures) shall be amended by inserting the words “of its decision” after the words “Office for Official Publications of the European Communities” and by inserting the words “its decision and of” after the words “negotiate the contract of”.

(11) Regulation 23 of the Public Supply Regulations (information about contract award procedures) shall be amended by inserting the following paragraph after paragraph (3)—

(a) OJ L 199, 9.8.1993, p.1, as amended by Council Directive 97/52/EC (OJ L 328, 28.11.1997, p.1) and Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p.1) as corrected in a Corrigendum (OJ L 214, 9.8.2002, p.1). Annex IV to Council Directive 93/36/EEC is replaced by the text of Annex I to Commission Directive 2001/78/EC. Annex IV as replaced by Annex I contains standard forms of prior information notice (standard form 2), contract notice (standard form 1) and contract award notice (standard form 3). Corrections to the standard forms of notices are given in the Corrigendum, which also sets out the corrected standard forms in Annex I to Commission Directive 2001/78/EC in their entirety.

“(3A) A contracting authority shall promptly inform any supplier who submitted an offer or who applied successfully to be included amongst the persons to be selected to tender for or to negotiate the contract of its decision in relation to the award of the contract and shall do so in writing if requested.”.

(12) Schedule 3 of the Public Supply Regulations shall be revoked.

Amendment of the Utilities Regulations

6.—(1) Regulation 2(1) of the Utilities Regulations (interpretation) shall be amended by inserting the following definition after the definition of “telecommunications software services”—

““the Utilities Directive” means Council Directive 93/38/EEC of 9th August 1993(a);”.

(2) Regulation 14(1) of the Utilities Regulations (periodic indicative notices) shall be amended by substituting “the form of the relevant periodic indicative notice in Annex XIV to the Utilities Directive (depending on whether or not the notice is used to call for competition)” for “a form substantially corresponding to that set out in Part A of Schedule 5”.

(3) Regulation 14(2)(b) of the Utilities Regulations (periodic indicative notices) shall be amended by inserting after regulation 14(2)(b)(ii)—

“(iii) 5,000,000 euro for a contract expected to be awarded by a utility specified in Parts G to N or Q of Schedule 1.”.

(4) Regulation 15(2)(b) of the Utilities Regulations (call for competition) shall be replaced by—

“(b) in any case by sending to the Official Journal a contract notice in the form of the contract notice in Annex XII to the Utilities Directive and containing the information specified in the contract notice in respect of the contract.”.

(5) Regulation 17(2)(b) of the Utilities Regulations (time limits) shall be amended by substituting “the form of periodic indicative notice used to call for competition in Annex XIV to the Utilities Directive” for “Parts II and III of Part A of Schedule 5”.

(6) Regulation 18(12) of the Utilities Regulations (qualification system for providers) shall be amended by substituting “in the form of the qualification system notice in Annex XIII to the Utilities Directive” for “substantially corresponding to the form set out in Part E of Schedule 5”.

(7) Regulation 23(1) of the Utilities Regulations (contract award notice) shall be amended by substituting “in the form of the contract award notice in Annex XV to the Utilities Directive” for “substantially corresponding to the form set out in Part F of Schedule 5”.

(8) Regulation 23(2) of the Utilities Regulations (contract award notice) shall be amended by substituting “section V.1.1), section V.1.2) and section V1.4 of the form of the contract award notice in Annex XV to the Utilities Directive” for “paragraphs 6, 9, and 11 of the contract award notice”.

(9) Regulation 23(3) of the Utilities Regulations (contract award notice) shall be amended by substituting “section II.5) of the form of contract award notice in Annex XV to the Utilities Directive” for “paragraph 3 of the contract award notice” in both places where these words appear.

(a) OJ L 199, 9.8.1993, p.84, as amended by Council Directive 98/4/EC (OJ L 101, 1.4.1998, p.1) and Commission Directive 2001/78/EC (OJ L 285, 29.10.2001, p.1) as corrected in a Corrigendum (OJ L 214, 9.8.2002, p.1). Annexes XII to XV, XVII and XVIII to Council Directive 98/4/EC are replaced by the text of Annexes VII to XII respectively to Commission Directive 2001/78/EC. Annex XII to Council Directive 98/4/EC as replaced by Annex VII to Commission Directive 2001/78/EC contains a standard form of contract notice (standard form 4); Annex XIII as replaced by Annex VIII contains a standard form of qualification system notice (standard form 12); Annex XIV as replaced by Annex IX contains a standard form of periodic indicative notice (standard form 5) and a standard form of periodic indicative notice being a call for competition (standard form 6); Annex XV as replaced by Annex X contains a standard form of contract award notice (standard form 7); Annex XVII as replaced by Annex XI contains a standard form of design contest notice (standard form 10); and Annex XVIII as replaced by Annex XII contains a standard form of notice of the results of a design contest (standard form 11). Corrections to the standard forms of notices are given in the Corrigendum, which also sets out the corrected standard forms in Annexes VII to XII to Commission Directive 2001/78/EC in their entirety.

(10) Regulation 31(2) of the Utilities Regulations (design contests) shall be amended by substituting “the form of the design contest notice in Annex XVII to the Utilities Directive” for “a form substantially corresponding to that set out in Part G of Schedule 5”.

(11) Regulation 31(10) of the Utilities Regulations (design contests) shall be amended by substituting “in the form of the notice of the results of a design contest in Annex XVIII to the Utilities Directive” for “substantially corresponding to the form set out in Part H of Schedule 5”.

(12) Schedule 5 to the Utilities Regulations shall be revoked.

14th January 2003

Jim Fitzpatrick
Philip Woolas
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Directive 2001/78/EC of 13 September 2001 (OJ No. L 285, 29.10.2001, p.1) on the use of standard forms in the publication of contract notices in its entirety for England, Wales, Scotland and Northern Ireland. A Corrigendum of 9 August 2002 (OJ No. L 214, 19.8.2002, p.1) to Directive 2001/78/EC corrected some errors in the forms annexed to the Directive. Directive 2001/78/EC replaces Annexes III and IV to Council Directive 92/50/EEC (OJ No. L 209, 24.7.1992, p.1) as amended by European Parliament and Council Directive 97/52/EC (OJ No. L 328, 28.11.1997, p.1), Annex IV to Council Directive 93/36/EEC (OJ No. L 199, 9.8.1993, p.1) as amended by European Parliament and Council Directive 97/52/EC (OJ No. L 328, 28.11.1997, p.1), Annexes IV, V and VI to Council Directive 93/37/EEC (OJ No. L 199, 9.8.1993, p.54) as amended by European Parliament and Council Directive 97/52/EC (OJ No. L 328, 28.11.1997, p.1), and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC (OJ No. L 199, 9.8.1993, p.84) as amended by European Parliament and Council Directive 98/4/EC (OJ No. L 101, 1.4.1998, p.1) concerning the co-ordination of procedures for the award of public service contracts, public supply contracts, public works contracts and procurement procedures of entities operating in the water, energy, transport and telecommunications sectors respectively. Those Directives have been implemented for the United Kingdom by the Public Services Regulations 1993 (S.I. 1993/3228) as amended by the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 (S.I. 2000/2009) (“the Services Regulations”), the Public Supply Contracts Regulations 1995 (S.I. 1995/201) as amended by the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 (“the Supply Regulations”), the Public Works Contracts Regulations 1991 (S.I. 1991/2680) as amended by the Public Contracts (Works, Services and Supply) (Amendment) Regulations 2000 (“the Works Regulations”), and the Utilities Contracts Regulations 1996 (S.I. 1996/2911) as amended by the Utilities Contracts (Amendment) Regulations 2001 (S.I. 2001/2418) (“the Utilities Regulations”).

The Works Regulations, the Services Regulations, and the Supply Regulations specify the procedures to be followed by public bodies, called “contracting authorities”, and 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 Commission Directive 2001/78/EC is to introduce a standard form of the various model notices which the existing Directives require to be published in the Official Journal of the European Communities at various stages in the procurement process and which are set out in the relevant Annexes to the Directives referred to above and reproduced in the relevant Regulations. Contracting authorities and utilities are to use these standard forms for their notices. They are available in electronic form as part of the information system for public procurement (SIMAP) launched by the Commission in collaboration with Member States and can be found on the SIMAP website at <http://simap.eu.int>. The use of these detailed standard forms is intended to simplify the operation of the rules on notices while adapting them to the electronic means developed by SIMAP and to contribute to greater transparency in the procurement process.

These Regulations replace the references in the Works, Services, Supply and Utilities Regulations to the forms of notice for publication in the Official Journal of the European Communities corresponding to those set out in the Schedules to the relevant Regulations with references to the standard forms of notice set out in the relevant Annexes to the Directives referred to above, as now replaced by the forms in the Annexes to Directive 2001/78/EC. These standard forms have been corrected and re-published in a Corrigendum to Commission Directive 2001/78/EC. Given their length and their availability on the SIMAP website, they are not now reproduced in Schedules to the Works, Services, Supply and Utilities Regulations. These Regulations also revoke the relevant Schedules to the Works, Services, Supply and Utilities Regulations setting out the superseded forms of notice (regulation 3(1) to (9), (12), (13) and (15), regulation 4(1) to (9), (12), (13) and (15), regulation 5(1) to (9) and (13) and regulation 6(1) to (11) and (13) respectively).

These Regulations amend the Works, Services and Supply Regulations to require contracting authorities to promptly notify bidders of contract award decisions, in writing if requested (regulation 3(11), 4(11) and 5(11)).

These Regulations amend the threshold for the provision of periodic indicative notices for works contracts proposed to be awarded by utilities engaged in certain activities (regulation 6(3)).

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