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STATUTORY INSTRUMENTS

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**2011 No. 1848**

**The Defence and Security Public Contracts Regulations 2011**

PART 7

RULES APPLICABLE TO SUB-CONTRACTING

CHAPTER 1

Sub-contracts awarded by economic operators which are not contracting authorities

**Thresholds and rules on advertising**

**42.**—(1) When a successful economic operator which is not a contracting authority intends to award a sub-contract which has a value, net of value added tax, estimated not to be lower than the thresholds laid down in regulation 9, it must make known its intention by way of a sub-contract notice.

(2) Sub-contract notices must—

- (a) subject to sub-paragraph (b), contain the information referred to in Annex V to the Defence and Security Procurement Directive, or
- (b) if [Commission Regulation \(EC\) No 1564/2005](#) sets out a form to be used for this purpose, be in that form and contain the information therein specified,

and any other information deemed useful by the successful economic operator, if necessary with the approval of the contracting authority.

(3) Sub-contract notices must be published in accordance with regulation 48(1)(b) and (3) and the successful economic operator must not place a notice in any publication—

- (a) before the date on which the notice is despatched in accordance with regulation 48(1)(b); or
- (b) which contains any additional information to that contained in the notice despatched in accordance with regulation 48(1)(b).

(4) A sub-contract notice is not required when a sub-contract meets the conditions of regulation 43.

(5) The successful economic operator may fulfil the sub-contracting requirements in regulation 37(3) by awarding sub-contracts on the basis of a framework agreement concluded in accordance with the rules set out in regulations 41 and 44 and in paragraphs (1) to (4).

(6) Sub-contracts based on a framework agreement concluded in accordance with paragraph (5)

- (a) must be awarded within the limits of the terms laid down in the framework agreement and, when awarding sub-contracts, the parties to the framework agreement must not include terms in the sub-contract that are inconsistent with the terms laid down in that framework agreement; and
- (b) may only be awarded to sub-contractors that were originally party to the framework agreement.

(7) The term of a framework agreement concluded in accordance with paragraph (5) may not exceed seven years, except in exceptional circumstances determined by taking into account the expected service life of any delivered items, installations or systems, and the technical difficulties which a change of supplier may cause.

(8) A framework agreement concluded in accordance with paragraph (5) may not be used improperly or in such a way as to prevent, restrict or distort competition.

(9) For the award of sub-contracts which have a value, net of value added tax, estimated to be less than the thresholds laid down in regulation 9, successful economic operators must apply the principles of the TFEU regarding transparency and competition.

(10) Regulation 9 applies to the calculation of the estimated value of sub-contracts.

(11) In this regulation “framework agreement” means an agreement between the successful economic operator and one or more sub-contractors which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the sub-contractor will enter into one or more contracts with the successful economic operator in the period during which the framework agreement applies.