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STATUTORY INSTRUMENTS

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**2013 No. 1582**

**The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013**

**Tender requirements and procedure** **E+W**

**6.—(1)** The incumbent undertaker must put a specified infrastructure project (including the financing of such a project) out to tender.

(2) Subject to paragraphs (3) and (4), where in relation to the specified infrastructure project—

(a) neither [<sup>F1</sup>the [<sup>F2</sup>Utilities Contracts Regulations 2016 nor the Concession Contracts Regulations 2016] nor Part 2 of the Public Contracts Regulations 2015] apply,

(b) the incumbent undertaker relies on an exemption under the [<sup>F3</sup>Utilities Contracts Regulations 2016],

[<sup>F4</sup>(c) the incumbent undertaker seeks offers without a call for competition pursuant to regulation 50(1)(b) to (j) of the Utilities Contracts Regulations 2016, or]

(d) the incumbent undertaker uses the negotiated procedure without the prior publication of a contract notice under [<sup>F5</sup>regulation 32 of the Public Contracts Regulations 2015],

the provisions of the [<sup>F6</sup>Utilities Contracts Regulations 2016] mentioned in the first column of the table in Part 1 of Schedule 2 (application of the [<sup>F6</sup>Utilities Contracts Regulations 2016]) apply in relation to that project.

(3) Those provisions of the [<sup>F7</sup>Utilities Contracts Regulations 2016] apply—

(a) subject to the modifications specified in the second column of the table in Part 1 of Schedule 2; and

(b) as if—

(i) references to “the utility” were references to “the incumbent undertaker” within the meaning of these Regulations; and

[<sup>F8</sup>(ii) for Chapter 2 of Part 5 of the Utilities Contracts Regulations 2016 (applications to the Court), there were substituted the Chapter 2 of Part 5 set out in Part 2 of Schedule 2.]

(4) Paragraphs (2) and (3) do not apply to—

(a) preparatory work undertaken by the incumbent undertaker pursuant to a notice issued under regulation 5(3); or

(b) any part of a specified infrastructure project which has been put out to tender in accordance with the Public Contracts Regulations 2006 or the Utilities Contracts Regulations 2006, where any part of the tender process has been commenced before these Regulations come into force.

(5) The incumbent undertaker must consult the following concerning the terms on which the specified infrastructure project is to be put out to tender—

(a) the Secretary of State;

(b) the Authority; and

- (c) where any part of the infrastructure in question is or is to be in Wales, the Welsh Ministers.
- (6) The incumbent undertaker must determine which bid to accept (if any).
- (7) Section 112 of the Act <sup>M1</sup> (requirement that proposed drain or sewer be constructed so as to form part of the general system) does not apply to any sewer or drain to be constructed by a licensed infrastructure provider.
- (8) In relation to any licensed infrastructure provider, unless the Authority otherwise allows by notice, paragraphs (2) and (3) and Schedule 2 apply as if—
- (a) in paragraph (2)—
    - (i) for “Subject to paragraphs (3) and (4), where in relation to the specified infrastructure project”, there were substituted “ Subject to paragraph (3), where in relation to a specified infrastructure project ”; and
    - (ii) after “to that project”, there were inserted “ or any part of it ”; and
  - (b) for “incumbent undertaker”, in each place it occurs [<sup>F9</sup>other than in relation to the modifications made to regulations 42 and 98 of the Utilities Contracts Regulations 2016 specified in the second column of the table in Part 1 of Schedule 2], there were substituted “ licensed infrastructure provider ”.

#### Textual Amendments

- F1** Words in reg. 6(2)(a) substituted (26.2.2015) by [The Public Contracts Regulations 2015 \(S.I. 2015/102\)](#), reg. 1(2), **Sch. 6 para. 23(a)**
- F2** Words in reg. 6(2)(a) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(2)** (with reg. 5)
- F3** Words in reg. 6(2)(b) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(3)** (with reg. 5)
- F4** Reg. 6(2)(c) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(4)** (with reg. 5)
- F5** Words in reg. 6(2)(d) substituted (26.2.2015) by [The Public Contracts Regulations 2015 \(S.I. 2015/102\)](#), reg. 1(2), **Sch. 6 para. 23(c)**
- F6** Words in reg. 6(2) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(5)** (with reg. 5)
- F7** Words in reg. 6(3) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(6)** (with reg. 5)
- F8** Reg. 6(3)(b)(ii) substituted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(7)** (with reg. 5)
- F9** Words in reg. 6(8)(b) inserted (18.4.2016) by [The Public Procurement \(Amendments, Repeals and Revocations\) Regulations 2016 \(S.I. 2016/275\)](#), reg. 1(1), **Sch. 2 para. 49(8)** (with reg. 5)

#### Marginal Citations

- M1** Section 112 was amended by section 36(2) of the Water Act 2003 and by section 42(4) of the Flood and Water Management Act 2010, although the latter provision is not yet in force.

**Changes to legislation:**

There are currently no known outstanding effects for the The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013, Section 6.