

2007 No. 3542

**PUBLIC PROCUREMENT, ENGLAND AND WALES
PUBLIC PROCUREMENT, NORTHERN IRELAND**

**The Public Contracts and Utilities Contracts (Amendment)
Regulations 2007**

<i>Made - - - - -</i>	<i>17th December 2007</i>
<i>Laid before Parliament</i>	<i>18th December 2007</i>
<i>Coming into force</i>	
<i>For the purposes of Regulations 2 and 3</i>	<i>1st January 2008</i>
<i>For all other purposes</i>	<i>8th January 2008</i>

The Treasury are designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to public procurement.

The Treasury make the following Regulations in exercise of the powers conferred under section 2(2) of, as read with paragraph 1A of Schedule 2, to that Act(c).

These Regulations make provision for a purpose mentioned in section 2(2) of that Act, and it appears to the Treasury that it is expedient for certain references to provisions of Community instruments to be construed as references to those provisions as amended from time to time.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Public Contracts and Utilities Contracts (Amendment) Regulations 2007.

(2) These Regulations come into force for the purposes of regulations 2 and 3 on 1st January 2008 and for all other purposes on 8th January 2008.

(3) In these Regulations “the Public Contracts Regulations” means the Public Contracts Regulations 2006(d) and “the Utilities Contracts Regulations” means the Utilities Contracts Regulations 2006(e).

Thresholds—Amendments to the Public Contracts Regulations

2.—(1) The Public Contracts Regulations are amended as follows.

(2) In regulation 8 (thresholds)—

(a) in paragraph (2), for “5,278,000 euro” substitute “the sum mentioned in Article 7(c) of the Public Sector Directive”(f);

(a) S.I. 1991/755.

(b) 1972 c. 68.

(c) Paragraph 1A was inserted by the Legislative and Regulatory Reform Act 2006 (c. 51), section 28.

(d) S.I. 2006/05.

(e) S.I. 2006/06.

(f) The current threshold figures are available from the Office of Government Commerce website at <http://www.ogc.gov.uk>

- (b) in paragraph (3)(a), for “137 000 euro” substitute “the sum mentioned in Article 7(a) of the Public Sector Directive”;
- (c) in paragraph (3)(b), for “211,000 euro” substitute “the sum mentioned in Article 7(b) of the Public Sector Directive”;
- (d) in paragraph (4), for “211,000 euro” substitute “the sum mentioned in Article 7(b) of the Public Sector Directive”;
- (e) in paragraph (5)(a), for “137,000 euro” substitute “the sum mentioned in Article 7(a) of the Public Sector Directive”;
- (f) in paragraph (5)(b), for “211,000 euro” substitute “the sum mentioned in Article 7(b) of the Public Sector Directive”; and
- (g) after paragraph (5), insert—
 - “(5A) References in paragraphs (2) to (5) to the Public Sector Directive are references to that Directive as amended from time to time.”.

(3) In paragraph 4(b) of regulation 11 (prior information notices), for “5,278,000 euro” substitute “the sum mentioned in Article 7(c) of the Public Sector Directive as amended from time to time”.

(4) In regulation 33 (design contests):

- (a) in paragraph (4)(a), for “137,000 euro” substitute “the sum mentioned in Article 67(1)(a) of the Public Sector Directive”;
- (b) in paragraph (4)(b), for “211,000 euro” substitute “the sum mentioned in Article 67(1)(b) of the Public Sector Directive”;
- (c) in paragraph (5), for “211,000 euro” substitute “the sum mentioned in Article 67(1)(c) of the Public Sector Directive”; and
- (d) after paragraph (5), insert—
 - “(5A) References in paragraphs (4) and (5) to the Public Sector Directive are references to that Directive as amended from time to time.”.

(5) In paragraph (2) of regulation 36 (public works concession contracts), for “5,278,000 euro” substitute “the sum mentioned in the first paragraph of Article 56 of the Public Sector Directive as amended from time to time”.

Thresholds – Amendments to the Utilities Contracts Regulations

3.—(1) The Utilities Contracts Regulations are amended as follows.

(2) In regulation 11 (thresholds)—

- (a) In paragraph (2)(a), for “422,000 euro” substitute “the sum mentioned in Article 16(a) of the Utilities Directive”;
- (b) In paragraph (2)(b), for “5,278,000 euro” substitute “the sum mentioned in Article 16(b) of the Utilities Directive”; and
- (c) After paragraph (2), insert—
 - “(2A) References in paragraph (2) to the Utilities Directive are references to that Directive as amended from time to time.”

(3) In paragraph (4)(b) of regulation 15 (periodic indicative notices), for “5,278,000 euro” substitute “the sum mentioned in Article 16(b) of the Utilities Directive as amended from time to time”.

(4) In regulation 34 (design contests)—

- (a) In paragraph (2), for “the relevant threshold described in paragraph (4)” substitute “the sum mentioned in Article 61(1) of the Utilities Directive”.
- (b) In paragraph (3)(b), for “the relevant threshold described in paragraph (4)” substitute “the sum mentioned in Article 61(2) of the Utilities Directive”; and
- (c) In paragraph (4), for “the relevant threshold is 422,000 euro” substitute “references to the Utilities Directive are references to that Directive as amended from time to time”.

Professional and trade registers—Amendments to the Public Contracts Regulations

- 4.—(1) The Public Contracts Regulations are amended as follows.
- (2) In regulation 23 (criteria for the rejection of economic operators)—
- (a) in paragraph (4)(j) for “(7), (8) and (9)”, substitute “(7), (7A), (7B), (8), (8A), (8B) and (9)”;
 - (b) after paragraph (7), insert—
 - “(7A) An economic operator established in Cyprus shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if—
 - (a) in relation to procedures for the award of a public services contract or a public supply contract the economic operator is either—
 - (i) certified as incorporated by the Registrar of Companies and Official Receiver (Εφορος Εταιρειών και Επίσημος Παραλήπτης); or
 - (ii) certified as having declared on oath that the economic operator is carrying on business in the trade in question in Cyprus at a specific place of business and under a specific trading name; or
 - (b) in relation to procedures for the award of a public works contract the economic operator is certified by the Council for the Registration and Audit of Civil Engineering and Building Contractors (Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων) according to the Registration and Audit of Civil Engineering and Building Contractors Law of Cyprus.
 - “(7B) An economic operator established in Malta shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if—
 - (a) the economic operator produces its “numru ta' registrazzjoni tat- Taxxa tal- Valur Mizjud (VAT) u n- numru tal-licenzja ta' kummerc”;
 - (b) where the economic operator is a member of a partnership or is a company, it produces the relevant registration number issued by the Malta Financial Services Authority.”.
- (c) after paragraph (8), insert—
 - “(8A) In relation to procedures for the award of a public services contract, an economic operator established in Hungary shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator is certified as being entitled to be engaged in the trade in question in Hungary.
 - “(8B) In relation to procedures for the award of a public supply contract, an economic operator established in Spain shall be treated as registered on the professional or trade register for the purposes of paragraph (4)(j) if the economic operator is certified as having declared on oath that it is entitled to be engaged in the trade in question in Spain.”
- (3) In the table in Schedule 4 (extension to non-member states), omit the following entries—
- (a) 1. Bulgaria; and
 - (b) 5. Romania.
- (4) For Schedule 6 (professional or trade registers) substitute the Schedule set out in the Schedule to these Regulations.

Professional and trade registers—Amendments to the Utilities Contracts Regulations

- 5.—(1) In the table in Schedule 4 to the Utilities Contracts Regulations (extension to non-member states), omit the following entries—
- (a) Bulgaria; and
 - (b) Romania.

Miscellaneous amendments to the Public Contracts Regulations

- 6.—(1) The Public Contracts Regulations are amended as follows.
- (2) In regulation 5 (application)—
- (a) in paragraph (1), after “Subject to paragraph” insert “(1A) and”;

- (b) after paragraph (1), insert—
 - “(1A) Paragraph (1) does not apply whenever a contracting authority seeks offers in relation to a proposed framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded.”
 - (c) in paragraph (2), after “Part B services contract” insert “or a framework agreement or dynamic purchasing system in respect of which only Part B services contracts can be based or awarded”;
 - (d) in paragraph (2)(a), for “Parts 1, 8 and 9” substitute “Parts 1, 9 and 10”;
 - (e) in paragraph (2)(b), for “Parts 2 to 7” substitute “Parts 2 to 8”;
 - (f) in paragraph (3)(a), for “Parts 1, 8 and 9” substitute “Parts 1, 9 and 10”; and
 - (g) in paragraph (3)(b), for “Parts 6 and 7” substitute “Parts 6, 7 and 8”.
- (3) In regulation 8 (thresholds) for paragraph (4)(b), substitute—
- “(b) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1, 64228200-2 within category 5 of Part A of Schedule 3;”.
- (4) In regulation 13(a)(ii) (use of the negotiated procedure with prior publication of a contract notice), for “or 16(7)” substitute “, (16)7 or 18(10)”.
- (5) In regulation 14 (use of the negotiated procedure without prior publication of a contract notice)—
- (a) for paragraph (1)(a)(i), substitute—
 - “(i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract all of, and only, those economic operators which submitted a tender following an invitation made during the course of the discontinued open procedure, restricted procedure or competitive dialogue procedure (not being a tender which was excluded in accordance with regulation 15(11), 16(7) or 18(10));” and
 - (b) in paragraph (5)(b), for “regulation 11” substitute “regulation 8”.
- (6) In paragraph (2) of regulation 16 (restricted procedure) for “informing the intention,” substitute “forming the intention,”.
- (7) In paragraph (3) of regulation 31 (contract award notice), omit “which has been concluded in accordance with regulation 19”.
- (8) In regulation 33 (design contests)—
- (a) for paragraph (5)(a), substitute—
 - “(a) for telecommunications services specified under CPV references 64221000-1, 64227000-3, 64228000-0, 64228100-1, 64228200-2 within category 5 of Part A of Schedule 3;” and
 - (b) in paragraph (5)(b), for “category 8 or Part A of Schedule 3” substitute “category 8 of Part A of Schedule 3”.
- (9) In regulation 37 (sub-contracting the work or works to be carried out under a public works concession contract)—
- (a) For paragraph (4)(b) substitute—
 - “(b) which the concessionaire does not intend to enter into with an economic operator who is—
 - (i) a member of the group of economic operators which acted jointly for the purpose of obtaining the public works concession contract; or
 - (ii) related to it or to any member of that group; and”
 - (b) For paragraph (13) substitute—
 - “(13) A contracting authority shall require applicants for a public works concession contract to submit with the application a list of—
 - (a) all economic operators which are related to the applicant, and

(b) all economic operators which are related to the economic operators referred to in sub-paragraph (a)
and to submit an updated list from time to time to take account of any changes in the economic operators referred to in sub-paragraphs (a) and (b).”

(10) In Schedule 1 (GPA Annex 1 Contracting Authorities), for “National History Museum” substitute “Natural History Museum”.

(11) In category 24 in Part B of Schedule 3 (categories of service), for “Education and vocational health services” substitute “Education and vocational education services”.

Miscellaneous Amendments to the Utilities Contracts Regulations

7.—(1) The Utilities Contracts Regulations are amended as follows.

(2) In paragraph (1) of regulation 2 (interpretation), in the definition of “central purchasing body” for “means a utility which is a contracting authority” substitute “means a contracting authority,”.

(3) In paragraph (4) of regulation 7 (exclusion of contracts awarded to affiliated undertakings or joint ventures), for “a utility may calculate” substitute “a utility shall calculate”.

17th December 2007

Steve McCabe
Alan Campbell
Two of the Lords Commissioners of Her Majesty’s Treasury

SCHEDULE TO BE SUBSTITUTED FOR SCHEDULE 6 TO THE PUBLIC
CONTRACTS REGULATIONS

“SCHEDULE 6

Regulation 23(4)(j)

PROFESSIONAL OR TRADE REGISTERS

PUBLIC SERVICES CONTRACTS

1. In relation to procedures for the award of a public services contract, the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)—
- in Austria, the Firmenbuch, the Gewerberegister or the Mitgliederverzeichnisse der Landeskammern;
 - in Belgium, the Registre du commerce/Handelsregister and the Ordres Professionels/Beroepsorden;
 - in Bulgaria, the **Търговски регистър**;
 - in the Czech Republic, the obchodní rejstřík;
 - in Denmark, the Erhvervs- og Selskabsstyrelsen;
 - in Estonia, the Keskäriregister;
 - in Finland, the Kaupparekisteri and Handelsregistret;
 - in France, the Registre du commerce and the Répertoire des métiers;
 - in Germany, the Handelsregister, the Handwerksrolle, the Vereinsregister, Partnerschaftsregister and the Mitgliedsverzeichnisse de Berufskammern der Ländern;
 - in Hungary, the Cégnyilvántartás, the egyéni vállalkozók jegyzői nyilvántartása, or a szakmai kamarák nyilvántartása;
 - in Iceland, the Firmaskrá or Hlutafélagaskrá;
 - in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato, the Registro delle commissioni provinciali per l'artigianato or the Consiglio nazionale degli ordini professionali;
 - in Latvia, the Uzņēmumu reģistrs (Enterprise Register);
 - in Lithuania, the Juridinių asmenų registras;
 - in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;
 - in the Netherlands, the Handelsregister;
 - in Norway, the Foretaksregisteret;
 - in Poland, **Krajowy Rejestr Sądowy** (National Court Registry);
 - in Portugal, the Registo nacional das Pessoas Colectivas;
 - in Romania, the Registrul Comerțului;
 - in Slovakia, the Obchodný register;
 - in Slovenia, the Sodni register and the obrtni register;
 - in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda;
 - and
 - in Sweden, the aktiebolags-, handels- eller föreningsregistren.

PUBLIC WORKS CONTRACTS

2. In relation to procedures for the award of a public works contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)—
- in Austria, the Firmenbuch, the Gewerberegister or the Mitgliederverzeichnisse der Landeskammern;
 - in Belgium, the Registre du commerce/Handelsregister;
 - in Bulgaria, the **Търговски регистър**;
 - in the Czech Republic, the obchodní rejstřík;
 - in Denmark, the Erhvervs- og Selskabsstyrelsen;
 - in Estonia, the Keskäriregister;
 - in Finland, the Kaupparekisteri/Handelsregistret;

in France, the Registre du commerce et des sociétés and the Répertoire des métiers;
in Germany, the Handelsregister and the Handwerksrolle;
in Greece, the registrar of contractors' enterprises (Μητρώο Εργοληπτικών Επιχειρήσεων) of the Ministry for Environment, Town and Country Planning and Public Works (ΨΤΙΕΞΩΔΕ);
in Hungary, the Cégnylvántartás or the egyéni vállalkozók jegyzői nyilvántartása;
in Iceland, the Firmaskrá;
in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato;
in Latvia, the Uzņēmumu reģistrs (Enterprise Register);
in Lithuania, the Juridinių asmenų registras;
in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;
in the Netherlands, the Handelsregister;
in Norway, the Foretaksregisteret;
in Poland, the Krajowy Rejestr Sądowy (National Court Registry);
in Portugal, the Instituto dos Mercados de Obras Públicas e Particulares e do Imobiliário (IMOPPI) (CAEOPP);
in Romania, the Registrul Comerțului;
in Slovakia, the Obchodný register;
in Slovenia, the Sodni register and the obrtni register;
in Spain, the Registro Oficial de Empresas Clasificadas del Ministerio de Hacienda;
and
in Sweden, the aktiebolags-, handels- eller föreningsregistren.

PUBLIC SUPPLY CONTRACTS

3. In relation to procedures for the award of a public supply contract the following are the appropriate professional or trade registers for the purposes of regulation 23(4)(j)—
- in Austria, the Firmenbuch, the Gewerberegister or the Mitgliederverzeichnisse der Landeskammern;
 - in Belgium, the Registre du commerce/Handelsregister;
 - in Bulgaria, the **ТЪРГОВСКИ РЕГИСТЪР**;
 - in the Czech Republic, the obchodní rejstřík;
 - in Denmark, the Erhvervs- og Selskabsstyrelsen;
 - in Estonia, the Keskäriregister;
 - in Finland, the Kaupparekisteri and Handelsregistret;
 - in France, the Registre du commerce et des sociétés and the Répertoire des métiers;
 - in Germany, the Handelsregister and Handwerksrolle;
 - in Greece, the Βιοτεχνικό ή Εμπορικό ή Βιομηχανικό Επιμελητήριο;
 - in Hungary, the Cégnylvántartás, the egyéni vállalkozók jegyzői nyilvántartása;
 - in Iceland, the Firmaskrá;
 - in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato and the Registro delle Commissioni provinciali per l'artigianato;
 - in Latvia, the Uzņēmumu reģistrs (Enterprise Register);
 - in Lithuania, the Juridinių asmenų registras;
 - in Luxembourg, the Registre aux firmes and the Rôle de la chambre des métiers;
 - in Norway, the Foretaksregisteret;
 - in the Netherlands, the Handelsregister;
 - in Poland, the Krajowy Rejestr Sądowy (National Court Registry);
 - in Portugal, the Registo Nacional das Pessoas Colectivas;
 - in Romania, the Registrul Comerțului;
 - in Slovakia, the Obchodný register;
 - in Slovenia, the Sodni register and the obrtni register;
 - in Spain, the Registro Mercantil; and
 - in Sweden, the aktiebolags-, handels- eller föreningsregistren.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Public Contracts Regulations 2006 (SI 2006/05) (“the Public Contracts Regulations”) and the Utilities Contracts Regulations 2006 (SI 2006/06) (“the Utilities Contracts Regulations”).

Council Directive 2004/18/EC (OJ L134 30.4.2004, p.114) (“the Public Sector Directive”) concerns the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts. Council Directive 2004/17/EC (OJ L134, 30.4.2004, p.1) (“the Utilities Directive”) concerns the co-ordination of procurement procedures of entities operating in the water, energy, transport and postal service sectors. Those Directives have been implemented for England, Wales and Northern Ireland by the Public Contracts Regulations and the Utilities Contracts Regulations respectively.

Regulations 2 and 3 amend the Public Contracts Regulations and the Utilities Contracts Regulations to replace the fixed threshold figures which currently appear in the Regulations with references which will automatically apply changes in the relevant threshold figures in the Public Sector Directive and the Utilities Directive as and when such amendments of those Directives come into force. The current threshold figures are available from the Office of Government Commerce website (www.ogc.gov.uk).

The Public Contracts Regulations include a list of professional and trade registers (or designate alternative provisions) for each member State of the European Union. Regulation 4 and 5 amend those lists with amendments to include professional and trade registers for those member States who joined the European Union in

- (i) May 2004 (as set out in the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, OJ L236 23.9.2003, p.33); and
- (ii) January 2007 (as set out in Council Directive 2006/97/EC adapting certain Directives in the field of free movement of goods, by reason of the accession of Bulgaria and Romania, OJ L363 20.12.2006, p.107).

Regulation 4 also makes a miscellaneous amendment with respect to professional registers and trade associations in Spain. Regulation 6 makes minor amendments to the Public Contracts Regulations to clarify the application of the regulations to a framework agreement or dynamic purchasing system in relation to which only Part B services contracts can be based or awarded; to the use of the negotiated procedure without prior publication of a contract notice; and to the subcontracting of work under a public works concession contract. The list of economic operators to be submitted to a contracting authority has also been clarified. In addition a number of minor corrections, mostly of typographical and cross-referencing errors, have been made.

Regulation 7 makes minor amendments to the Utilities Contract Regulations to clarify the calculation of turnover by a utility in respect of its affiliated undertakings, and to make a minor correction to the definition of a central purchasing body.

A full regulatory impact assessment has not been produced as no impact on the private and voluntary sectors is foreseen.

A Transposition Note is attached to the Explanatory Memorandum which is available alongside this instrument on the OPSI website (www.opsi.gov.uk).

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