

# Public Finance (Control and Audit)

## PUBLIC WORKS CONTRACTS REGULATIONS 1996

**1977-09**

**Revoked  
Subsidiary  
1996/006**

Regulations made under section 76 of the Public Finance (Control and Audit) Act.

## PUBLIC WORKS CONTRACTS REGULATIONS 1996

**Revoked by LN. 2012/089 as from 21.6.2012**

**(LN. 1996/006)**

**11.1.1996**

Amending enactments	Relevant current provisions	Commencement date
2005/010	rr. 2(1), 14(1)(h)(4)(5A) and (5B)	1.5.2004
Act. 2007-17	rr. 8(6), 10(7), 20(7), 22(3), 28(1) & (2), 29(1), (2) & (3)	14.6.2007

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**Public Finance (Control and Audit)**  
**PUBLIC WORKS CONTRACTS REGULATIONS 1996**  
**PART I**  
**GENERAL**

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**Title and commencement.**

1. These regulations may be cited as the Public Works Contracts Regulations 1996 and shall come into effect on the 11th day of January 1996.

**Interpretation.**

2.(1) In these regulations, unless the context shall otherwise require, —

“to award” means to accept an offer made in relation to a proposed contract;

“carrying out”, in relation to a work or works, means the construction or the design and construction of that work or those works;

“concessionaire” means a person who has entered into a public works concession contract with a contracting authority;

“contract documents” mean the invitation to tender for or negotiate the contract, the proposed conditions of contract, the specifications or description of the work or works required by the contracting authority and of the materials or goods to be used in or for it or them, and all documents supplementary thereto;

“contract notice” means a notice sent to the Official Journal in accordance with regulation 11(2), 12(2), 13(2), 25(2) or 26(3);

“contracting authority” has the meaning given to it in regulation 3;

“contractor” has the meaning given to it in regulation 4;

“the Directive” means Council Directive 93/37/EEC concerning the co-ordination of procedures for the award of public works contracts;

“ECU” means the European Currency Unit as defined in Council Regulation (EEC) NO 3180/78;

“established” has the same meaning as it has for the purposes of the Community Treaties;

“financial year” means the period of 12 months ending on 31st March in any year or, in relation to any person whose accounts are prepared in respect of a different 12 month period, that period of 12 months;

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“national of a relevant State” means, in the case of a person who is not an individual, a person which has been formed in accordance with the laws of a relevant State and which has its registered office, central administration or principal place of business in a relevant State;

“negotiated procedure” means a procedure leading to the award of a public works contract whereby the contracting authority negotiates the terms of the contract with one or more persons selected by it;

“Official Journal” means the Official Journal of the European Communities;

“open procedure” means a procedure leading to the award of a public works contract whereby all interested persons may tender for the contract;

“public housing scheme works contract” means a public works contract relating to the design and construction of a public housing scheme;

“public works concession contract” means a public works contract under which the consideration given by the contracting authority consists of or includes the grant of a right to exploit the work or works to be carried out under the contract;

“public works contract” means a contract in writing for consideration (whatever the nature of the consideration) —

- (a) for the carrying out of a work or works for a contracting authority, or
- (b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements;

“relevant state” means a member State, Romania, Bulgaria, Iceland, Norway and Liechtenstein;

“restricted procedure” means a procedure leading to the award of a public works contract whereby only persons selected by the contracting authority may submit tenders for the contract;

“work” means the outcome of any works which is sufficient of itself to fulfil an economic and technical function;

“working day” means a day other than a Saturday, Sunday or Bank Holiday within the meaning of the Banking and Financial Dealings Act; and

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“works” means any of the activities specified in Schedule 1, being activities contained in the general industrial classification of economic activities within the Communities.

(2) The value in the currency of any relevant State of any amount expressed in these regulations in ECU shall be calculated by reference to the exchange rate for the time being applying for the purposes of the Directive as published from time to time in the Official Journal.

- (3) Where a thing is required to be done under these regulations —
- (a) within a period after an action is taken, the day on which that action was taken shall not be counted in the calculation of that period;
  - (b) within a certain period, that period shall include 2 working days;
  - (c) within a period and the last day of that period is not a working day, the period shall include the following working day.

### **Contracting authorities.**

3. For the purposes of these regulations each of the following is a “contracting authority” —

- (a) a Government Department,
- (b) the House of Assembly,
- (c) a body governed by public law as defined in Article 1 of the Directive.

### **Contractors.**

4.(1) For the purposes of these regulations, a “contractor” means a person—

- (a) who sought, or who seeks, or would have wished, to be the person to whom a public works contract is awarded, and
- (b) who is a national of and established in a relevant State.

(2) Where these regulations apply a contracting authority shall not treat a person who is not a national of and established in a relevant State more favourably than one who is.

### **Application of these regulations.**

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5. These regulations apply whenever a contracting authority seeks offers in relation to a proposed public works contract other than public works contracts excluded from the operation of these regulations by regulations 6 and 7, except that in Parts II, III, IV and V of these regulations and in regulations 24, 27 and 28 references to a “public works contract” shall not include a public works concession contract.

#### **General exclusions.**

6. These regulations shall not apply to the seeking of offers in relation to a proposed public works contract —

- (a) by a contracting authority which is, or which in seeking the offers is exercising the functions of, a carrier by land, air or sea;
- (b) which concerns the production, transport or distribution of drinking water;
- (c) by a contracting authority whose principal activity is the production or distribution of energy;
- (d) where different procedures govern the procedures leading to the award of the contract and it is to be entered into —
  - (i) pursuant to an international agreement to which the United Kingdom and a State which is not a relevant State are parties and it provides for the carrying out of works intended for the joint implementation or exploitation of a project pursuant to that agreement;
  - (ii) pursuant to an international agreement of the United Kingdom relating to the stationing of troops; or
  - (iii) in accordance with the contract award procedures of an organisation of which only States are members (an “international organisation”) or of which only States or international organisations are members.

#### **Thresholds.**

7.(1) These regulations shall not apply to the seeking of offers in relation to a proposed public works contract where the estimated value of the contract at the relevant time is less than 5,000,000 ECU.

(2) Subject to sub-regulations (3), (5) and (6), the estimated value for the purposes of sub-regulation (1) of a public works contract shall be the

value of the consideration which the contracting authority expects to give under the contract.

(3) Subject to sub-regulations (4) and (6), the estimated value for the purposes of sub-regulation (1) of a public works contract which is one of a number of contracts entered into or to be entered into for the carrying out of a work shall be the aggregate of the value of the consideration which the contracting authority has given or expects to give under all the contracts for the carrying out of the work.

(4) Sub-regulation (3) shall not apply to any public works contract (unless the contracting authority chooses to apply that subsection to that contract) if that contract has an estimated value (calculated in accordance with sub-regulation (2)) of less than 1,000,000 ECU, and the aggregate value of that contract and of any other public works contract for the carrying out of the work in respect of which the contracting authority takes advantage of the disapplication of sub-regulation (3) by virtue of this sub-regulation is less than 20 per cent of the aggregate of the value of the consideration which the contracting authority has paid or expects to pay under all the contracts for the carrying out of the work.

(5) Subject to sub-regulation (6), the estimated value for the purposes of sub-regulation (1) of a public works concession contract shall be the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not propose to grant a concession.

(6) Where a contracting authority intends to provide any goods to the person awarded a public works contract for the purpose of carrying out that contract, the value of the consideration for the purposes of sub-regulations (2) and (3) shall be taken to include the estimated value at the relevant time of those goods.

(7) The relevant time for the purposes of sub-regulations (1) and (6) means, in relation to a public works contract, the date on which a contract notice would be sent to the Official Journal if the requirement to send such a notice applied to that contract in accordance with these regulations.

(8) A contracting authority shall not enter into separate public works contracts with the intention of avoiding the application of these regulations to those contracts.

## **PART II**

### **TECHNICAL SPECIFICATIONS**

#### **Technical specifications in the contract documents.**

8.(1) In this regulation, unless the context shall otherwise require, —

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“common technical specification” means a technical specification drawn up in accordance with a procedure which has been —

- (a) recognised by the member States with a view to uniform application in all member States; and
- (b) published in the Official Journal;

“essential requirements” means requirements relating to safety, health and certain other aspects in the general interest which the works shall meet;

“European specification” means a common technical specification, a standard of a relevant State implementing a European standard or a European technical approval;

“European standard” means a standard approved by the European Committee for Standardisation (“CEN”) or by the European Committee for Electrotechnical Standardisation (“CENELEC”) as a “European Standard (“EN”)” or a “Harmonisation Document (“HD”)” according to the Common Rules of those organisations;

“European technical approval” means an approval of the fitness for use of a product, issued by an approval body designated for the purpose by a member State, following a technical assessment of whether the product fulfils the essential requirements for building works, having regard to the inherent characteristics of the product and the defined conditions of application and use;

“standard” means a technical specification approved by a recognised standardising body for repeated and continuous application, compliance with which is in principle not compulsory;

“technical specifications” means the technical requirements defining the characteristics required of the work or works and of the materials and goods used in or for it or them (such as quality, performance, safety or dimensions) so that the works, work, materials and goods are described objectively in a manner which will ensure that they fulfil the use for which they are intended by the contracting authority and in relation to materials and goods, “technical specifications” include requirements in respect of quality assurance, terminology, symbols, tests and testing methods, packaging, marking and labelling and in relation to a work or works, they include requirements relating to design and costing, the testing, inspection and acceptance of a work or works, and the methods or techniques of constructions.

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(2) If a contracting authority wishes to lay down technical specifications which the work or works to be carried out under a public works contract and which the materials and goods used in or for it or them shall meet it shall specify all such technical specifications in the contract documents.

(3) Subject to sub-regulation (4), the technical specifications in the contract documents relating to a public works contract shall be defined by reference to any European specifications which are relevant.

(4) A contracting authority may define the technical specifications referred to in sub-regulation (3) other than by reference to relevant European specifications if —

- (a) the contracting authority is under an obligation to define the technical specifications by reference to technical requirements which are mandatory in Gibraltar for the work or works to be carried out under the contract or for the materials or goods to be used in or for it or them, (but only to the extent that such an obligation is compatible with Community obligations);
- (b) the relevant European specifications do not include provision for establishing conformity to, or it is technically impossible to establish satisfactorily that the work or works or the materials or goods do conform to, the relevant European specifications;
- (c) subject to sub-regulation (5), application of the relevant European specifications would oblige the contracting authority to acquire a work, works, material or goods incompatible with equipment already in use or would entail disproportionate costs or disproportionate technical difficulties; or
- (d) the work or works are of a genuinely innovative nature for which use of existing relevant European specifications would be inappropriate.

(5) A contracting authority may define the technical specifications other than by reference to relevant European specifications only on the grounds specified in sub-regulation (4)(c) where the contracting authority has a clearly defined and recorded strategy for changing over, within a set period, to European specifications.

(6) A contracting authority shall state in the contract notice which of the circumstances specified in sub-regulation (4) was the ground for defining the technical specifications other than by reference to European specifications or, if it is impossible to include this information in the contract notice, the contracting authority shall specify it in the contract documents and shall in any event keep a record of this information and

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shall, if so required for the purposes of compliance with Article 10.4 of the Directive, send that information to the Financial Secretary.

(7) In the absence of European specifications relevant to the work or works to be carried out under a public works contract or to the materials or goods to be used in or for it or them, the technical specifications in the contract documents —

- (a) shall be defined by reference to the technical specifications of a relevant State recognised as complying with the basic requirements specified in any Council Directives on technical harmonisation in accordance with the procedures laid down in those directives and, in particular, in accordance with the procedures laid down in Council Directive 89/106/EEC, on the approximation of laws, regulations and administrative procedures in the member States relating to construction products;
- (b) may be defined by reference to the technical specifications of a relevant State relating to design and method of calculation and execution of a work or works and use of materials and goods;
- (c) may be defined by reference to the following standards (and, if they are so defined, preference shall be given to the following standards in the order in which they are listed) —
  - (i) standards of a relevant State implementing international standards;
  - (ii) other standards of a relevant State and technical approvals; or
  - (iii) any other standards.

(8) Subject to sub-regulation (10), the contract documents relating to a public works contract shall not include technical specifications which refer to materials or goods of a specific make or source or to a particular process and which have the effect of favouring or eliminating particular contractors.

(9) Without prejudice to the generality of sub-regulation (8), references to trademarks, patents, types, origin or means of production shall not be incorporated into the technical specifications in the contract documents.

(10) Notwithstanding sub-regulations (8) and (9), a contracting authority may incorporate the references referred to in those sub-regulations into the technical specifications in the contract documents if —

- (a) such references are justified by the subject of the contract; or

- (b) the work or works to be carried out under the contract cannot otherwise be described by reference to technical specifications which are sufficiently precise and intelligible to all contractors, provided that the references are accompanied by the words “or equivalent”.

**PART III**

PROCEDURES LEADING TO THE AWARD OF A PUBLIC WORKS  
CONTRACT

**Prior information notices.**

9. A contracting authority intending to seek offers in relation to a public works contract shall, as soon as possible after the decision approving the planning of the work or works, send to the Official Journal a notice, in a form substantially corresponding to that set out in Part A of Schedule 2, and containing the information therein specified in relation to the contract.

**Selection of contract award procedure.**

10. (1) For the purpose of seeking offers in relation to a proposed public works contract (but, in the case of a public housing scheme works contract, subject to regulation 24) a contracting authority shall use the open procedure, the restricted procedure or the negotiated procedure and shall decide which of those procedures to use in accordance with the provisions of this regulation.

(2) A contracting authority may use the negotiated procedure in the following circumstances —

- (a) subject to sub-regulation (3), in the event that the procedure leading to the award of a public works contract by the contracting authority using the open or restricted procedure was discontinued —
  - (i) because of irregular tenders, or
  - (ii) following an evaluation made in accordance with regulation 11(7) or 12(4);

and without prejudice to the generality of the meaning of the words “irregular tenders” a tender may be considered irregular if the contractor fails to meet the requirements of, or the tender offers variations on the requirements specified in, the contract documents where this is not permitted under the terms of the invitation to tender, or the work, works, materials or goods

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offered do not meet the technical specifications (within the meaning of regulation 8(1)) of the contracting authority;

- (b) when the work or works are to be carried out under the contract purely for the purpose of research, experiment or development but not where the works are to be carried out to establish commercial viability or to recover research and development costs;
- (c) exceptionally, when the nature of the work or works to be carried out under the contract is such, or the risks attaching thereto are such, as not to permit prior overall pricing;
- (d) subject to sub-regulation (3), in the absence of tenders or of appropriate tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure;
- (e) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the work or works to be carried out under the contract may be carried out only by a particular person;
- (f) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by, and not attributable to, the contracting authority, the time limits specified in regulations 11 and 12 if the open or restricted procedure is used, or the time limits specified in regulation 13 if the negotiated procedure is used pursuant to sub-regulation (2)(a) to (c), cannot be met;
- (g) subject to sub-regulation (4), when a contracting authority wants a person who has entered into a public works contract with the contracting authority to carry out additional works which through unforeseen circumstances were not included in the project initially considered or in the original public works contract and —
  - (i) such works cannot for technical or economic reasons be carried out separately from the works carried out under the original public works contract without great inconvenience to the contracting authority, or
  - (ii) such works can be carried out separately from the works carried out under the original public works contract but are strictly necessary to the later stages of that contract; and

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(h) subject to sub-regulation (5), when a contracting authority wishes a person who has entered into a public works contract with that contracting authority to carry out new works which are a repetition of works carried out under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

(3) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(a) or (d) unless the proposed terms of the contract are substantially unaltered from the proposed terms of the contract in relation to which offers were sought using the open or restricted procedure.

(4) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(g) where the aggregate value of the consideration to be given under contracts for the additional works exceeds 50 per cent of the value of the consideration payable under the original contract, and, for the purposes of this sub-regulation, the value of the consideration shall be taken to include the estimated value of any goods which the contracting authority provided to the person awarded the contract for the purpose of carrying out the contract.

(5) A contracting authority shall not use the negotiated procedure pursuant to sub-regulation (2)(h) unless the contract notice relating to the original contract stated that a public works contract for new works which would be a repetition of the works carried out under the original contract may be awarded using the negotiated procedure pursuant to sub-regulation (2)(h) and unless the procedure for the award of the new contract is commenced within three years of the original contract being entered into.

(6) In all other circumstances the contracting authority shall use the open procedure or the restricted procedure.

(7) A contracting authority using the negotiated procedure pursuant to sub-regulation (2)(d) shall submit a report recording the fact that it has done so to the Financial Secretary if so required for the purposes of compliance with Article 8.3 of the Directive.

### **The open procedure.**

11. (1) A contracting authority using the open procedure shall comply with the provisions of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public works contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part B of Schedule 2, inviting tenders and containing the information therein specified in relation to the contract.

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(3) Subject to sub-regulation (4), the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the contract notice shall be specified in the notice and shall be not less than 52 days from the date of despatch of the notice but, if the contract documents are too bulky to be supplied within this time or it is necessary that contractors be given the opportunity to inspect the site on which the work or works under the contract is or are to be carried out or documents relating to the contract, then that minimum period shall be extended to allow for such supply or inspection.

(4) Where the contracting authority has published a notice in accordance with regulation 9 in relation to the public works contract it may substitute for the period of not less than 52 days specified in sub-regulation (3) a period of not less than 36 days.

(5) The contracting authority shall send the contract documents within 6 days of the receipt of a request from any contractor provided that the documents are requested by the date specified in the contract notice and any fee specified in the contract notice has accompanied the request.

(6) The contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a contractor provided that the request is received in sufficient time to enable the contracting authority to supply the information no later than 6 days before the date specified in the contract notice as the final date for the receipt of tenders.

(7) The contracting authority may exclude a tender from the evaluation of offers made in accordance with regulation 20 only if the contractor may be treated as ineligible to tender on a ground specified in regulation 14 or if the contractor fails to satisfy the minimum standards of economic and financial standing and technical capacity required of contractors by the contracting authority and for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

#### **The restricted procedure.**

12. (1) A contracting authority using the restricted procedure shall comply with the provisions of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the public works contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part C of Schedule 2, inviting requests to be selected to tender and containing the information therein specified in relation to the contract.

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(3) Subject to sub-regulation (14), the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to tender shall be specified in the contract notice and shall be not less than 37 days from the date of the despatch of the notice.

(4) The contracting authority may exclude a contractor from those persons from whom it will make the selection of persons to be invited to tender only if the contractor may be treated as ineligible on a ground specified in regulation 14 or if the contractor fails to satisfy the minimum standards of economic and financial standing and technical capacity required of contractors by the contracting authority and for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(5) The contracting authority shall make the selection of the contractors to be invited to tender in accordance with regulations 14, 15, 16 and 17, and in making the selection and in issuing invitations the contracting authority shall not discriminate between contractors on the grounds of their nationality or the relevant State in which they are established.

(6) The contracting authority may predetermine the range within which the number of persons which it intends to invite for the contract shall be fixed but only if —

- (a) the lower number of the range is not fewer than 5 and the higher number not more than 20;
- (b) the range is determined in the light of the nature of the work to be carried out under the contract; and
- (c) the range is specified in the contract notice.

(7) In any event, the number of persons invited to tender shall be sufficient to ensure genuine competition.

(8) The contracting authority shall send invitations to each of the contractors selected to tender and the invitation shall be accompanied by the contract documents, or the invitation shall state the address for requesting them.

(9) The invitation shall be sent in writing simultaneously to each contractor selected to tender.

(10) The following information shall be included in the invitation —

- (a) the address to which requests for the contract documents (if not accompanying the invitation) and further information relating to those documents should be sent, the final date for making

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such a request and the amount and terms of the fee which may be charged for supplying that material;

- (b) the final date for the receipt of tenders, the address to which they shall be sent and the language or languages in which they shall be drawn up;
- (c) a reference to the contract notice published in accordance with sub-regulation (2);
- (d) an indication of the information to be included with the tender which the contracting authority may require to be provided in accordance with sub-regulations 15, 16 and 17; and
- (e) the criteria for the award of the contract if this information was not specified in the contract notice published in accordance with sub-regulation (2).

(11) Subject to sub-regulations (12) and (14), the date which the contracting authority shall fix as the last date for the receipt by it of tenders made in response to the invitation to tender which shall be specified in the invitation to tender in accordance with sub-regulation (10)(b) shall not be less than 40 days from the date of the despatch of the invitation but, if it is necessary that contractors should be given the opportunity to inspect the premises on which the works under the contract are to be carried out or documents relating to the contract documents, then that minimum period shall be extended to allow for such inspection.

(12) Subject to sub-regulation (14), where the contracting authority has published a notice in accordance with regulation 9 in relation to the public works contract, it may substitute for the period of not less than 40 days in sub-regulation (11) a period of not less than 26 days.

(13) Subject to sub-regulation (14), the contracting authority shall supply such further information relating to the contract documents as may reasonably be requested by a contractor selected to tender provided that the request for such information is received in sufficient time to enable the contracting authority to supply it not less than 6 days before the date specified in the invitation to tender as the final date for the receipt of the tender.

(14) Where compliance with the minimum periods referred to in sub-regulations (3), (11), (12) and (13) is rendered impracticable for reasons of urgency, the contracting authority may substitute for the period specified in sub-regulation (3) a period of not less than 15 days and for the periods specified in sub-regulations (11) and (12) periods of not less than 10 days and for the period specified in sub-regulation (13) a period of not less than 4

days and, in those circumstances, the contracting authority shall send the invitation to tender by the most rapid means possible.

(15) A contracting authority shall not refuse to consider an application to be invited to tender if it is made by letter, telegram, telex, facsimile or telephone provided that, in the last 4 cases, it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of applications to be invited to tender for the contract.

## **The negotiated procedure.**

13. (1) A contracting authority using the negotiated procedure shall comply with the following provisions of this regulation except that —

- (a) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(d), (e), (f), (g) or (h), and
- (b) a contracting authority using the negotiated procedure pursuant to regulation 10(2)(a) who invites to negotiate the contract every contractor who submitted a tender following an invitation made during the course of the discontinued open or restricted procedure (not being a tender which was excluded pursuant to regulation 11), need not comply with sub-regulations (2) to (6).

(2) The contracting authority shall publicise its intention to seek offers in relation to the public works contract by sending to the Official Journal as soon as possible after forming the intention a notice, in a form substantially corresponding to that set out in Part D of Schedule 2, inviting requests to be selected to negotiate and containing the information therein specified in relation to the contract.

(3) Subject to sub-regulation (4), the date which the contracting authority shall fix as the last date for the receipt by it of requests to be selected to negotiate shall be specified in paragraph 6(a) of the contract notice and shall be not less than 37 days from the date of despatch of the notice.

(4) Where compliance with the minimum period of 37 days in sub-regulation (3) is rendered impracticable for reasons of urgency, the contracting authority may substitute a period of not less than 15 days and, in those circumstances, the contracting authority shall send the invitation to negotiate the contract by the most rapid means possible.

(5) Where there is a sufficient number of persons who are suitable to be selected to negotiate the contract, the number selected to negotiate shall be not less than 3.

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(6) A contracting authority shall not refuse to consider an application to be selected to negotiate if it is made by letter, telegram, telex, facsimile or by telephone provided that, in the last 4 cases it is confirmed by letter despatched before the date fixed by the contracting authority as the last date for the receipt of requests to be selected to negotiate.

(7) The contracting authority may exclude a contractor from those persons from whom it will make the selection of persons to be invited to negotiate the contract only if the supplier may be treated as ineligible on a ground specified in regulation 14 or if the contractor fails to satisfy the minimum standards of economic and financial standing and technical capacity required of contractors by the contracting authority and for this purpose the contracting authority shall make its evaluation in accordance with regulations 14, 15, 16 and 17.

(8) The contracting authority shall make the selection of the contractors to be invited to negotiate in accordance with regulations 14, 15, 16 and 17 and in making the selection and in issuing the invitations to negotiate the contracting authority shall not discriminate between contractors on the grounds of their nationality or the relevant State in which they are established.

### **PART IV**

#### **SELECTION OF CONTRACTORS**

##### **Criteria for rejection of contractors.**

14. (1) A contracting authority may treat a contractor as ineligible to tender for, or to be included amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a public works contract in accordance with regulations 11(7), 12(4), and 13(7), or decide not to select a contractor to tender for or to negotiate a public works contract in accordance with regulations 12(5) and 13(8) on one of the following grounds, namely that the contractor —

- (a) being an individual is bankrupt or has had a receiving order or administration order made against him or has made any composition or arrangement with or for the benefit of his creditors or has made any conveyance or assignment for the benefit of his creditors or appears unable to pay, or to have no reasonable prospect of being able to pay, a debt within the meaning of the Bankruptcy Act or is the subject of any similar procedure under the law of any state;
- (b) being a company has passed a resolution or is the subject of an order by the court for the company's winding up otherwise than for the purposes of bona fide reconstruction or

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amalgamation, or has had a receiver, manager or administrator on behalf of a creditor appointed in respect of the company's business or any part thereof or is the subject of proceedings for any of the above procedures or is the subject of similar procedures under the law of any state;

- (c) has been convicted of a criminal offence relating to the conduct of his business or profession;
- (d) has committed an act of grave misconduct in the course of his business or profession;
- (e) has not fulfilled obligations relating to the payment of social security contributions under the law of Gibraltar or of the relevant State in which the contractor is established;
- (f) has not fulfilled obligations relating to the payment of taxes under the law of Gibraltar or of the relevant State in which the contractor is established;
- (g) is guilty of serious misrepresentation in providing any information required of him under this regulation and regulations 15, 16 and 17; or
- (h) subject to sub-regulations (5), (5A), (5B) and (6), is not registered on the professional or trade register of the relevant State in which the contractor is established under the conditions laid down by that State.

(2) Subject to regulation 18, the contracting authority may require a contractor to provide such information as it considers it needs to make the evaluation in accordance with sub-regulation (1) except that it shall accept as conclusive evidence that a contractor does not fall within the grounds specified in sub-regulation (1)(a), (b), (c), (e) or (f) if that contractor provides to the contracting authority —

- (a) in relation to the grounds specified in sub-regulation (1)(a), (b) or (c) —
  - (i) an extract from the judicial record, or
  - (ii) in a relevant State which does not maintain such a judicial record, a document issued by the relevant judicial or administrative authority;
- (b) in relation to the grounds specified in sub-regulation (1)(e) or (f), a certificate issued by the relevant competent authority;

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(c) in a relevant State where the documentary evidence specified in sub-regulations (2)(a) and (b) is not issued in relation to one of the grounds specified in sub-regulation (1)(a), (b), (c), (e) or (f), a declaration on oath made by the contractor before the relevant judicial, administrative or competent authority or a relevant notary public or commissioner for oaths.

(3) In this regulation, “relevant” in relation to a judicial, administrative or competent authority, notary public or commissioner for oaths means an authority designated by, or a notary public or commissioner for oaths in, the relevant State in which the contractor is established.

(4) The following are the appropriate professional or trade registers for the purposes of sub-regulation (1)(h) —

in Austria, the Firmenbuch, Gewerberegister and Mitgleiderverzeichnisse der Landeskammern;

in Belgium, the registre du commerce/Handelsregister;

in the Czech Republic, the obchodní rejstřík;

in Denmark, the Handelsregistret, Aktieselskabsregistret, and Erhvervsregistret;

in Estonia, the Keskäriregister;

in Finland, the Kaupparekisteri or Handelsregistret;

in France, the registre du commerce and the répertoire des métiers;

in Germany, the Handelsregister and the Handwerksrolle;

in Greece the registrar of contractors’ enterprises’ (mitroo ergoliptikon epicheiriseon) of the ministry for environment, town and country planning and public works;

in Hungary, the Cégnylvántartás and the egyéni vállalkozók jegyzői nyilvántartása;

in Iceland, the Firmaskra or Hlutafelgaska;

in Italy, the Registro della Camera di commercio, industria, agricoltura e artigianato;

in Latvia, the Uzņēmumu reģistrs (“Enterprise Register”);

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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 Foretaksregistret;

in Poland, the Krajowy Rejestr Sądowy (National Court Register);

in Portugal, the Commissao de Alvaras de Empresas de Obras Publicas e Particulares (“CAEOPP”);

in Slovakia, the Obchodný register;

in Slovenia, the Sodni register and obrtni register;

in Spain, the Registro Oficial de Contratistas del Ministerio de Industria Comercio y Turismo; and

in Sweden, the Aktienbolagsregistret, Handelsregister or Foreningsregistret.

(5) A contractor established in the United Kingdom, Gibraltar or Ireland shall be treated as registered on the professional or trade register for the purposes of sub-regulation (1)(h) if the contractor —

- (a) is established in Ireland and is certified as registered with the Register of Friendly Societies, or
- (b) is established in Gibraltar or in either State and is either —
  - (i) certified as incorporated by the appropriate Registrar of Companies, or
  - (ii) is certified as having declared on oath that he is carrying on business in the trade in question in Gibraltar or the State in which he is established, as the case may be, at a specific place of business and under a specific trading name.

(5A) A contractor who is established in Cyprus shall be treated as registered in the professional or trade register if he provides a certificate from the Συμβούλιο Εγγραφής και Ελέγχου Εργοληπτών Οικοδομικών και Τεχνικών Έργων (“Council for the Registration and Audit of Civil

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Engineering and Building Contractors”) according to the Registration and Audit of Civil Engineering and Building Contractors Law.”;

(5B) An individual tenderer (or supplier) who is established in Malta shall be treated as registered in the professional or trade register if he gives his “numru ta' registrazzjoni tat-Taxxa tal-Valur Miżjud (VAT) u n- numru tal-liċenzja ta' kummerċ”, and, if he is a partnership or company, the relevant registration number as issued by the Malta Financial Services Authority.

(6) A supplier established in a relevant State, other than in Gibraltar, the United Kingdom or Ireland, which either has an equivalent professional or trade register which is not listed in sub-regulation (4) or which does not have an equivalent professional trade register shall be treated as registered on a professional trade register for the purposes of sub-regulation (1)(h) a on production of either a certificate that he is registered on the equivalent professional or trade register or where no such register exists, a declaration on oath, or in a relevant State which does not provide for a declaration of oath a solemn declaration, made by the supplier before the relevant judicial, administrative or competent authority or a relevant notary public or Commissioner for oaths, that he exercises the particular profession or trade.

#### **Information as to economic and financial standing.**

15. (1) Subject to regulation 19 and sub-regulation (2), in assessing whether a supplier meets any minimum standards of economic and financial standing required of suppliers by the contracting authority for the purposes of regulation 11(7), 12(4) and 13(7), and in selecting the suppliers to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information —

- (a) appropriate statements from the contractor’s bankers;
- (b) statement of accounts or extracts therefrom relating to the business of the contractor where publication of the statement is required under the law of the relevant State in which the contractor is established;
- (c) a statement of the overall turnover of the business of the contractor and the turnover in respect of works in the 3 previous financial years of the contractor.

(2) Where the information specified in sub-regulation (1) is not appropriate in a particular case a contracting authority may require a contractor to provide other information to demonstrate the contractor’s economic and financial standing.

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(3) A contracting authority which requires information to be provided in accordance with sub-regulations (1) and (2), shall specify in the contract notice or in the invitation to tender the information which the contractor shall provide.

(4) Where a contractor is unable for a valid reason to provide the information which the contracting authority has required, the contracting authority shall accept such other information provided by the contractor as the contracting authority considers appropriate.

### **Information as to technical capacity.**

16. (1) Subject to regulation 18, in assessing whether a contractor meets any minimum standards of technical capacity required of contractors by the contracting authority for the purposes of regulations 11(7), 12(4) and 13(7), and in selecting the contractors to be invited to tender for or to negotiate the contract in accordance with regulations 12(5) and 13(8), a contracting authority shall only take into account any of the following information (and it may require a contractor to provide such of that information as it considers it needs to make the assessment or selection) —

- (a) a list of the contractor's educational and professional qualifications where the contractor is an individual and a list of such qualifications of the contractor's managerial staff if any and those of the person or person who would be responsible for carrying out the works under the contract;
- (b) a list of works carried out over the past 5 years together with (unless the contracting authority specifies that the following certificate should be submitted direct to the contracting authority by the person certifying) certificates of satisfactory completion for the most important of those works indicating in each case the value of the consideration received, when and where the works were carried out and specifying whether they were carried out according to the rules of the trade or profession and properly completed;
- (c) a statement of the tools, plant and technical equipment available to the contractor for carrying out the work under the contract;
- (d) a statement of the contractor's average annual manpower and the number of managerial staff over the previous 3 years;
- (e) a statement of the technicians or technical services which the contractor may call upon for the carrying out of the work under the contract, whether or not the technicians or persons

providing the technical services are independent of the contractor.

(2) The contracting authority shall specify in the contract notice which of the information specified in sub-regulation (1) it requires to be provided.

**Supplementary information.**

17. Subject to regulation 18, the contracting authority may require a contractor to provide information supplementing the information provided in accordance with regulations 14, 15 and 16 or to clarify that information, provided that the information so required relates to the matters specified in regulations 14, 15 and 16.

**Official lists of recognised contractors.**

18. Where a contractor is registered on the official list of recognised contractors in a relevant State which maintains such lists and in which the contractor is established and the contractor submits to the contracting authority a certificate of registration issued by the authority administering the official list which specifies the information submitted to that authority which enabled the contractor to be registered and which states the classification given, the contracting authority, to the extent that the certificate deals with the grounds referred to in regulations 14(1)(a) to (d), (g) and (h), 15(1)(b) and (c) and 16(1)(b) and (d) —

- (a) shall accept the certificate as evidence that the contractor does not fall within the grounds specified in regulation 14(1)(a) to (d), (g) and (h) and shall not be entitled to require the contractor to submit such information relating to those grounds as is specified in regulation 14,
- (b) shall not be entitled to require the contractor to provide information specified in regulations 15(1)(b) and (c) and 16(1)(b) and (d), and
- (c) shall not be entitled to seek any supplementary information in accordance with section 17 in relation to the matters specified in paragraphs (a) and (b).

**Consortia.**

19. (1) In this regulation a “consortium” means 2 or more persons, at least one of whom is a contractor, acting jointly for the purpose of being awarded a public works contract.

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(2) A contracting authority shall neither treat the tender of a consortium as ineligible nor decide not to include a consortium amongst those persons from whom it will make the selection of persons to be invited to tender for or to negotiate a public works contract on the grounds that the consortium has not formed a legal entity for the purposes of tendering for or negotiating the contract, but where a contracting authority awards a public works contract to a consortium it may require the consortium to form a legal entity before entering into, or as a term of, the contract.

(3) In these regulations references to a contractor or to a concessionaire where the contractor or concessionaire is a consortium includes a reference to each person who is a member of that consortium.

### **PART V**

#### **THE AWARD OF A PUBLIC WORKS CONTRACT**

##### **Criteria for the award of a public works contract.**

20. (1) Subject to sub-regulations (6) and (7), a contracting authority shall award a public works contract on the basis of the offer which —

- (a) offers the lowest price, or
- (b) is the most economically advantageous to the contracting authority.

(2) The criteria which a contracting authority may use to determine that an offer is the most economically advantageous include price, period for completion, running costs, profitability and technical merit.

(3) Where a contracting authority intends to award a public works contract on the basis of the offer which is the most economically advantageous it shall state the criteria on which it intends to base its decision, where possible in descending order of importance, in the contract notice or in the contract documents.

(4) Where a contracting authority awards a public works contract on the basis of the offer which is the most economically advantageous, it may take account of offers which offer variations on the requirements specified in the contract documents if the offer meets the minimum requirements of the contracting authority and it has indicated in the contract notice that offers offering variations will be considered and has stated in the contract documents the minimum requirements which the offer shall meet and any specific requirements for the presentation of an offer offering variations.

(5) A contracting authority may not reject an offer on the ground that the technical specifications in the offer have been defined by reference to

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European specifications (within the meaning of regulation 8(1)) or to the technical specifications of a relevant State specified in regulation 8(7)(a) and (b).

(6) If an offer for a public works contract is abnormally low the contracting authority may reject that offer but only if it has requested in writing an explanation of the offer or of those parts which it considers contribute to the offer being abnormally low and has —

- (a) if awarding the contract on the basis of the offer which offers the lowest price, examined the details of all the offers made, taking into account any explanation given to it of the abnormally low tender, before awarding the contract, or
- (b) if awarding the contract on the basis of the offer which is the most economically advantageous, taken any such explanation into account in assessing which is the most economically advantageous offer,

and, in considering that explanation, the contracting authority may take into account explanations which justify the offer on objective grounds including the economy of the construction method, the technical solutions suggested by the contractor or the exceptionally favourable conditions available to the contractor for the carrying out of the works or the originality of the works proposed by the contractor.

(7) If a contracting authority which rejects an abnormally low offer is awarding the public services contract on the basis of the offer which offers the lowest price, it shall send a report justifying the rejection to the Financial Secretary for the purpose of complying with Article 30 of the Directive.

(8) For the purposes of this regulation an “offer” includes a bid by one part of a contracting authority to carry out work or works for another part of the contracting authority when the former part is invited by the latter to compete with the offers sought from other persons.

#### **Contract award notice.**

21. (1) A contracting authority which has awarded a public works contract shall, no later than 48 days after the award, send to the Official Journal a notice, substantially corresponding to the form set out in Part E of Schedule 2 and, subject to sub-regulation (2), including the information therein specified in relation to the contract.

(2) Any of the information specified in Part E of Schedule 2 to be included in the contract award notice may be omitted in a particular case where to publish such information would impede law enforcement, would

otherwise be contrary to the public interest, would prejudice the legitimate commercial interests of any person or might prejudice fair competition between contractors.

## **Information about contract award procedures.**

22. (1) A contracting authority which has awarded a public works contract shall, within 15 days of the date on which it receives a request from any contractor who was unsuccessful (whether pursuant to regulation 11(7), 12(4), 12(5), 13(7), 13(8), or (20)), inform that contractor of the reasons why he was unsuccessful and, if the contractor was unsuccessful as a result of the evaluation of offers made in accordance with regulation 20, the name of the person awarded the contract.

(2) A contracting authority shall prepare a record in relation to each public works contract awarded by it specifying—

- (a) the name and address of the contracting authority;
- (b) the work or works to be carried out under the contract and the value of the consideration to be given under it;
- (c) the names of the persons whose offers were evaluated in accordance with regulation 20 and, where the contracting authority has used the restricted or negotiated procedure, the reasons for their selection;
- (d) the names of the persons who were unsuccessful pursuant to regulation 11(7), 12(4), 12(5), 13(7) or 13(8);
- (e) the name of the person to whom the contract was awarded and the reasons for having awarded the contract to him;
- (f) if known to the contracting authority, the works under the contract which the person to whom the contract has been awarded intends to sub-contract to another person;
- (g) in the case of a contracting authority which used the negotiated procedure, which of the circumstances specified in section 10(2) constituted the grounds for using that procedure.

(3) If in accordance with Article 8 of the Directive the Commission requests a report containing the information specified in sub-regulation (2), the contracting authority shall send a written report containing that information or the main features of it, to the Financial Secretary.

(4) Where a contracting authority decided not to award a public works contract in respect of which a contract notice was published nor to seek

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offers in relation to another public works contract for the same purpose it shall inform the Official Journal of that decision and shall, if so requested by any contractor who submitted an offer to who applied to be included amongst the persons to be selected to tender for or negotiate the contract, the reasons for its decision.

#### **PART VI**

#### **MISCELLANEOUS**

##### **Subsidised works contracts.**

23. (1) When a contracting authority undertakes to contribute more than half of the consideration to be or expected to be paid under a contract to which this sub-regulation applies by virtue of sub-regulation (2) which has been or is to be entered into by a person other than another contracting authority (in this sub-regulation referred to as “the subsidised body”), that contracting authority shall —

- (a) make it a condition of the making of such contribution that the subsidised body complies with the provisions of these regulations in relation to that contract as if it were a contracting authority, and
- (b) ensure that the subsidised body does so comply or recover the contribution.

(2) Sub-regulation (1) applies to a contract which would be a public works contract if the subsidised body were a contracting authority and which is for the carrying out of any of the activities specified in Schedule 1 as are included in Group 502 or for the carrying out of building work for hospitals, facilities intended for sports, recreation and leisure, school buildings or buildings for administrative purposes.

##### **Public housing scheme works contracts.**

24. (1) For the purpose of seeking offers in relation to a public housing scheme works contract, where the size and complexity of the scheme and the estimated duration of the works involved require that the planning of the scheme be based from the outset on a close collaboration of a team comprising representatives of the contracting authority, experts and the contractor, a contracting authority may, except as indicated in this regulation, depart from the provisions of these regulations insofar as it is necessary to do so to select the contractor who is most suitable for integration into the team.

(2) The contracting authority shall comply with the provisions of regulation 12(1) to (5).

(3) The contracting authority shall include in the contract notice a job description which is as accurate as possible so as to enable contractors to form a valid idea of the scheme and of the minimum standards relating to the business or professional status, the economic and financial standing and the technical capacity which the person awarded the contract will be expected to fulfil.

**Public works concession contracts.**

25. (1) A contracting authority seeking offers in relation to a public works concession contract shall comply with the provisions of this regulation.

(2) The contracting authority shall publicise its intention to seek offers in relation to the concession contract by sending to the Official Journal as soon as possible after forming the intention a notice in a form substantially corresponding to that set out in Part F of Schedule 2 and containing the information therein specified in relation to the concession contract.

(3) The date which the contracting authority shall fix as the last date for the receipt by it of tenders or of requests to be selected to tender for or negotiate the contract, as the case may be, shall be specified in paragraph 3(a) of the notice and shall be not less than 52 days from the date of despatch of the notice.

**Sub-contracting the work or works to be carried out under a public works concession contract.**

26. (1) A contracting authority seeking offers in relation to a public works concession contract shall either —

- (a) include in the invitation to tender for, or to apply to be selected to tender for or to negotiate, the concession contract a request that the applicant specify whether he would intend, if awarded the concession contract, to sub-contract to persons who are not affiliated to him any of the work or works to be carried out under the concession contract and, if so, how much as a proportion of the value of such work or works would be so sub-contracted, or
- (b) require as a term of the concession contract —
  - (i) that the concessionaire sub-contract to persons who are not affiliated to the concessionaire some of all of the work or works to be carried out under the concession contract, and

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- (ii) that the amount of the works so sub-contracted be not less than 30%, or such higher percentage as may be specified in the contract at the option of the contracting authority or the concessionaire, of the value of the consideration which the contracting authority would expect to give for the carrying out of the work or works if it did not grant a concession.

(2) Where the concessionaire is a contracting authority that contracting authority shall comply with the provisions of these regulations in respect of public works contracts it seeks offers in relation to for the purpose of sub-contracting the work or works to be carried out under the public works concession contract.

(3) Where the concessionaire is not a contracting authority the concessionaire shall —

- (a) publicise his intention to seek offers in relation to any contract to which this sub-regulation applies by virtue of sub-regulation (4) by sending to the Official Journal as soon as possible after forming the intention a notice in a form substantially corresponding to that set out in Part G of Schedule 2 and containing the information therein specified in relation to the contract;
  - (b) comply with regulation 30 in relation to that notice as if the concessionaire were a contracting authority;
  - (c) if that notice invites tenders, fix as the last date for the receipt by the concessionaire of tenders a date of not less than 40 days from the date of the despatch of the notice and specify that date in paragraph 4(a) of the notice; and
  - (d) if the notice invites applications to be selected to tender for or negotiate the contract —
    - (i) fix as the last date for the receipt of such applications a date not less than 37 days from the date of despatch of the notice and specify that date in paragraph 4(a) of the notice; and
    - (ii) fix as the last date for the receipt of tenders following selection of the persons to be invited to tender a date of not less than 40 days from the date of despatch of the invitation and specify that date in the invitation.
- (4) Sub-regulation (3) applies to a contract —

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- (a) in relation to which the concessionaire is seeking offers for the purpose of sub-contracting any of the work or works to be carried out under the public works concession contract,
- (b) which the concessionaire does not intend to enter into with a person affiliated to him,
- (c) which would, if the concessionaire were a contracting authority, be a public works contract other than a public works contract in respect of which a contracting authority would be entitled to use the negotiated procedure pursuant to regulation 10(2)(d) to (h).

(5) For the purposes of this regulation a person is to be treated as affiliated to another person if either exercises, directly or indirectly, a dominant influence over the other or any person exercises, directly or indirectly, a dominant influence over both of them or if they are both members of any consortium formed for the purpose of performing the public works concession contract, and a person shall be taken to exercise a dominant influence over another person —

- (a) if he possesses the greater part of the issued share capital of that person or controls the voting power attached to such greater part, or
- (b) if he may appoint more than half of the individuals who are ultimately responsible for managing that person's affairs.

(6) A contracting authority shall require applicants for a public works concession contract to submit a list of all persons affiliated to the applicant with the application and to update that list from time to time to take account of any changes in the persons affiliated to the applicant.

### **Obligations relating to employment protection and working conditions.**

27. A contracting authority which includes in the contract documents relating to a public works contract information as to where a contractor may obtain information about obligations relating to employment protection and working conditions which will apply to the works to be carried out under the contract, shall request contractors to indicate that they have taken account of those obligations in preparing their tender or in negotiating the contract.

### **Statistical and other reports.**

28. (1) A contracting authority shall for the purpose of enabling the United Kingdom to comply with Article 34 of the Directive, no later than 31st July 1997 and 31st July in each alternate year thereafter, send to the Financial

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Secretary a report specifying in relation to each public works contract awarded by it during the year preceding the year in which the report is made

—

- (a) the value (estimated if necessary) of the consideration payable under the contract;
- (b) whether the open, restricted or negotiated procedure was used in awarding the contract;
- (c) if the negotiated procedure was used, pursuant to which provision of regulation 10(2) that procedure was used;
- (d) the principal category of works carried or to be carried out under the contract; and
- (e) the nationality of the person to whom the contract was awarded.

(2) A contracting authority shall send to the Financial Secretary a report containing such other information as he may from time to time require in respect of a particular public services contract for the purpose of causing the Commission to be informed.

#### **Responsibility for obtaining and forwarding reports and information.**

29. (1) Where the Financial Secretary is in possession of information which a contracting authority is required to send to him under these regulations as a result of a Community obligation, he shall send that information to the Secretary of State for onward transmission to the Commission.

(2) Where the Financial Secretary requires information available to a relevant State by virtue of Article 14.4 and submits to the Governor a request for the provision of such information the Governor shall transmit such request to the Secretary of State and shall provide to the Financial Secretary the information provided by the relevant State to the Secretary of State in response to the request.

(3) Where in the Directive, other than in Article 14.4 or 39, provision is made for a relevant State to supply information to or receive information from the Commission or a relevant State the Financial Secretary shall send such information to the Governor for onward transmission to the Secretary of State, or, as the case may be, where such information has been supplied to the Governor the Financial Secretary shall cause that information, or information as to its availability, to be published in appropriate manner in Gibraltar.

#### **Publication of notices.**

30. (1) Any notice required by these regulations to be sent to the Official Journal shall be sent by the most appropriate means to the Office for Official Publications of the European Communities and where the contracting authority is applying the restricted procedure or the negotiated procedure and, for reasons of urgency, is applying the provisions of regulation 12(14) and 13(4), the notice shall be sent by telex, telegram or facsimile.

(2) Any such notice shall not contain more than 650 words.

(3) The contracting authority shall retain evidence of the date of despatch to the Official Journal of each notice.

(4) The contracting authority shall not place a contract notice in the Press or like publications in Gibraltar before the date on which the notice is despatched in accordance with sub-regulation (1) and if it does, after that date, so place the notice it shall not add to the notice any information in relation to the contract which was not contained in the notice sent to the Official Journal.

**Enforcement of obligations.**

31. The provisions of the Public Procurement (Enforcement of Obligations) Regulations 1996 shall apply for the purpose of enforcing the obligations under these regulations in accordance with Council Directive 89/665/EEC

**SCHEDULE 1**

Regulation 2(1)

**ACTIVITIES CONSTITUTING WORKS**

Classes	Groups	Subgroups	Description and items
50			BUILDING AND CIVIL ENGINEERING
	500		General building and civil engineering work (without any particular specialisation) and demolition work
		500.1	General building and civil engineering work (without any

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		particular specialisation)
	500.2	Demolition work
501		Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential
	501.1	General building contractors
	501.2	Roofing
	501.3	Construction of chimneys, kilns and furnaces
	501.4	Waterproofing and damp-proofing
	501.5	Restoration and maintenance of outside walls (repainting, cleaning, etc.)
	501.6	Erection and dismantlement of scaffolding
	501.7	Other specialised activities relating to construction work (including carpentry)
502		Civil Engineering: construction of road bridges, etc.
	502.1	General civil engineering work
	502.2	Earth moving
	502.3	Construction of bridges, tunnels and shafts, drilling
	502.4	Hydraulic engineering (rivers, harbours, flows, locks and dams)
	502.5	Road-building (including specialised construction of airports and runways)
	502.6	Specialised construction work

		relating to water (i.e. to irrigation, land drainage, water supply, sewage disposal, sewerage, etc.)
	502.7	Specialised activities in other areas of civil engineering
503		Installation (fittings and fixtures)
	503.1	General installation work
	503.2	Gas fittings and plumbing, and the installation of sanitary equipment
	503.3	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)
	503.4	Sound and heat insulation, insulation against vibration
	503.5	Electrical fittings
	503.6	Installation of aerials, lightning conductors, telephones, etc.
504		Building completion work
	504.1	General building completion work
	504.2	Plastering
	504.3	Joinery, primarily engaged in on the site assembly and/or installation (including the laying of parquet flooring)
	504.4	Painting, glazing, paper hanging
	504.5	Tiling and otherwise covering floors and walls
	504.6	Other building completion work

**SCHEDULE 2**

Regulations 9, 11(2), 12(2),  
13(2), 21(2), 25(2) and 26(3)

**FORMS OF NOTICES FOR PUBLICATION IN THE OFFICIAL  
JOURNAL**

**PART A**

**PRIOR INFORMATION NOTICE**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority.
2.
  - (a) The site.
  - (b) The nature and extent of the services to be provided and, where relevant, the main characteristics of any lots by reference to the work.
  - (c) If available, an estimate of the cost range of the proposed services.
3.
  - (a) Estimated date for initiating the award procedures in respect of the contract or contracts.
  - (b) If known, estimated date for the start of the work.
  - (c) If known, estimated timetable for completion of the work.
4. If known, terms of financing of the work and of price revision and/or references to the provisions in which these are contained.
5. Other information.
6. Date of despatch of the notice.

**PART B**

**OPEN PROCEDURE NOTICE**

# Public Finance (Control and Audit)

## PUBLIC WORKS CONTRACTS REGULATIONS 1996

**1977-09**

**Revoked**  
**Subsidiary**  
**1996/006**

1. The name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2.
  - (a) The award procedure chosen.
  - (b) Nature of the contract for which tenders are being requested.
3.
  - (a) The site.
  - (b) The nature and extent of the services to be provided and general nature of the work.
  - (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all of the lots.
  - (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit for completion.
5.
  - (a) Name and address of the service 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.
6.
  - (a) The final date for receipt of tenders.
  - (b) The address to which they shall be sent.
  - (c) The language or languages in which they shall be drawn up.
7.
  - (a) Where applicable, the persons authorised to be present at the opening of tenders.
  - (b) The date, hour and place of such opening.
8. Any deposit and guarantees required.
9. Main terms concerning financing, and payment and/or reference to the provisions in which these are contained.

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**Revoked**  
**Subsidiary**  
**1996/006**

## Public Finance (Control and Audit)

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### **PUBLIC WORKS CONTRACTS REGULATIONS 1996**

10. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
11. Minimum standards of economic and financial standing and technical capacity required of the contractor to whom the contract is awarded.
12. Period during which the tenderer is bound to keep open his tender.
13. The 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.
14. Where applicable, prohibition on variants.
15. Other information.
16. Date of publication of the prior information notice in the Official Journal of the European Communities or references to its non-publication.
17. Date of despatch of the notice.

### **PART C**

#### **RESTRICTED PROCEDURE NOTICE**

1. The name, address, telephone number, telegraphic address, telex and facsimile numbers of the contracting authority.
2.
  - (a) The award procedure chosen.
  - (b) Where applicable, justification for the use of the shorter time limits.
  - (c) Nature of the contract for which tenders are being requested.
3.
  - (a) The site.
  - (b) The nature and extent of the services to be provided and general nature of the work.
  - (c) If the work of the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all the lots.

## Public Finance (Control and Audit)

**1977-09**

**Revoked  
Subsidiary  
1996/006**

### **PUBLIC WORKS CONTRACTS REGULATIONS 1996**

- (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit for completion.
  5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
  6.
    - (a) The final date for receipt of requests to participate.
    - (b) The address to which they shall be sent.
    - (c) The language or languages in which they shall be drawn up.
  7. The final date for despatch of invitations to tender.
  8. Any deposit and guarantees required.
  9. Main terms concerning financing and payment and/or provisions in which these are contained.
  10. Information concerning the contractor's personal position and minimum standards of economic and financial standing and technical capacity required of the contractor to whom the contract is awarded.
  11. The criteria for the award of the contract where they are not mentioned in the invitation to tender.
  12. Where applicable, prohibition on variants.
  13. Other information.
  14. Date of publication of the prior information notice in the Official Journal of the European Communities or reference to its non-publication.
  15. Date of despatch of the notice.

### **PART D**

#### **NEGOTIATED PROCEDURE NOTICE**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority.

**1977-09**

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**Subsidiary**  
**1996/006**

## Public Finance (Control and Audit)

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### PUBLIC WORKS CONTRACTS REGULATIONS 1996

2.
  - (a) The award procedure chosen.
  - (b) Where applicable, justification for the use of the shorter time limits.
  - (c) Nature of the contract for which tenders are being requested.
3.
  - (a) The site.
  - (b) The nature and extent of the services to be provided and general nature of the work.
  - (c) If the work or the contract is subdivided into several lots, the size of the different lots and the possibility of tendering for one, for several or for all the lots.
  - (d) Information concerning the purpose of the work or the contract where the latter also involves the drawing up of projects.
4. Any time limit.
5. Where applicable, the legal form to be taken by the grouping of contractors to whom the contract is awarded.
6.
  - (a) Final date for receipt of requests to participate.
  - (b) The address to which they shall be sent.
  - (c) The language or languages in which they shall be drawn up.
7. Any deposit and guarantees required.
8. Main terms concerning financing and payment and/or the provisions in which these are contained.
9. Information concerning the contractor's personal position and information and formalities necessary in order to evaluate the minimum standards of economic and financial standing and technical capacity required of the contractor to whom the contract is awarded.
10. Where applicable, prohibition on variants.
11. Where applicable, the names and addresses of suppliers already selected by the awarding authority.

12. Where applicable, date(s) of previous publications in the Official Journal of the European Communities.
13. Other information.
14. Date of publication of the prior information in the Official Journal of the European Communities.
15. Date of despatch of the notice.

**PART E**

**CONTRACT AWARD NOTICE**

1. Name and address of contracting authority.
2. Award procedure chosen.
3. Date of award of contract.
4. Criteria for award of contract.
5. Number of offers received.
6. Name and address of successful contractor(s).
7. Nature and extent of the services provided, general characteristics of the finished structure.
8. Price or range of prices (minimum/maximum) paid.
9. Where appropriate, value and proportion of contract likely to be subcontracted to third parties.
10. Other information.
11. Date of publication of the tender notice in the Official Journal of the European Communities.
12. Date of despatch of the notice.

**PART F**

**PUBLIC WORKS CONCESSION CONTRACT NOTICE**

**1977-09**

**Revoked**  
**Subsidiary**  
**1996/006**

## **Public Finance (Control and Audit)**

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### **PUBLIC WORKS CONTRACTS REGULATIONS 1996**

1. The name, address, telegraphic address, telephone, telex and facsimile numbers of the contracting authority.
2.
  - (a) The site.
  - (b) The subject of the concession and extent of the services to be provided.
3.
  - (a) Final date for receipt of candidatures.
  - (b) The address of which they shall be sent.
  - (c) The language or languages in which they shall be drawn up.
4. Personal, technical and financial conditions to be fulfilled by the candidates.
5. The criteria for the award of the contract.
6. Where applicable, the minimum percentage of the works contracts awarded to third parties.
7. Other information.
8. Date of despatch of the notice.

### **PART G**

#### **NOTICE OF WORKS CONTRACTS AWARDED BY CONCESSIONAIRES**

1.
  - (a) The site.
  - (b) The nature and extent of the service to be provided and the general nature of the work.
2. Any time limit for the completion of the works.
3. Name and address of the service from which the contract documents and additional documents may be requested.
4.
  - (a) The final date for receipt of requests to participate and/or for receipt of tenders.

## Public Finance (Control and Audit)

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### PUBLIC WORKS CONTRACTS REGULATIONS 1996

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- (b) The address to which they shall be sent.
- (c) The language or languages in which they shall be drawn up.
- 5. Any deposit and guarantees required.
- 6. The minimum standards of economic and financial standing and technical capacity required of the contractor.
- 7. The criteria for the award of the contract.
- 8. Other information.
- 9. Date of despatch of the notice.