

Defence and Security Public Contracts Regulations 2011

Chapter 19 - Statistics and Reports

Purpose

1. This guidance outlines the process procurers need to follow for the submission of statistical and other reports under the Defence and Security Public Contracts Regulations (DSPCR) 2011 to the European Commission (“the Commission”).
2. Specifically, the guidance sets out the legal framework, explains what information is required from procurers, by whom, and in what timescales.

What is the legal framework?

3. There are two parts of the DSPCR which deal with statistical reports:
 - a. Regulation 33(12) to (14) (Records and reports) sets out the requirement for procurers to draw up a written report for each contract or framework agreement under the DSPCR. These correspond to Article 37 of the Directive; and
 - b. Regulation 46 to 47 (Statistical and other reports and Provision of reports) sets out the requirements for the provision to the Commission of an annual aggregated statistical report. These correspond to Articles 65-66 of the Directive.

Who is required to provide statistics and reports?

4. All procurers within the meaning of Regulation 4 (Contracting authorities) are required to prepare records, provide statistics and draw up reports as outlined in Regulations 33(12-14), 46 and 47. Although it is likely that individual procurement teams will produce the individual records, often a centralised part of the procurer will provide the aggregated statistical reports in accordance with local instruction.

What reports are required for each contract?

5. Regulations 33(12) to (14) requires a procurer to draw up a written report for each contract or framework agreement. The purpose of the report, as set out in Article 37 of the Directive, is to confirm that you undertook the selection procedure in a transparent and non-discriminatory manner.
6. Regulation 33(12) states what information the report should contain. Regulation 33(13) covers information about the conduct of electronic procurements. Regulation 33(14) states that if the Commission requests a report with the information at 33(12) then the procurer should provide it for onward transmission.

7. For each contract you award or framework agreement you conclude, you must prepare a record comprising:
- a. the name and address of the procurer;
 - b. the award procedure you chose;
 - c. the contract price or value of the consideration you will give under the contract or framework agreement and:
 - (1) the type of goods purchased or hired;
 - (2) the work or works to be carried out; or
 - (3) the services to be provided;
 - d. where you evaluated offers in accordance with the criteria for award of contract (Regulation 31) of the DSPCR 2011, the names of the suppliers who submitted those offers and, where the procurer used the restricted procedure or negotiated procedure, the reasons why you selected those suppliers;
 - e. the name of any supplier:
 - (1) to which you awarded the contract ; or
 - (2) with which you concluded the framework agreement;and the reasons for awarding the contract to, or concluding the framework agreement with, that supplier;
 - f. the names of the suppliers which were unsuccessful and the reasons why they were unsuccessful;
 - g. if known to the procurer, the parts and amount of the contract or framework agreement that the supplier intends to subcontract to another supplier;
 - h. where the procurer used the negotiated procedure without the prior publication of a contract notice, the grounds for using that procedure;
 - i. where the procurer used the negotiated procedure without the prior publication of a contract notice, justification, if appropriate, for exceeding the time limits laid down in Regulation 16(3);
 - j. if appropriate, the reasons for the framework agreement lasting more than seven years;
 - k. where the procurer used the competitive dialogue procedure, details of the circumstances which constituted grounds for using that procedure in accordance with Regulation 19(2) of the DSPCR 2011; and
 - l. where a procurer abandoned a contract award procedure or the conclusion of a framework agreement, the reasons why the procurer decided not to award the contract or conclude the framework agreement.
8. If you conduct contract award procedures electronically, you must keep appropriate information to document progress of the procedure.

9. The Commission may request a report containing the information above. If you are not part of the Ministry of Defence (MOD) you should forward your report, in writing, to the Cabinet Office. MOD procurers should send their report to the Defence Commercial Policy, Process and Procedures team (Def Comrcl-P3), (e-mail: [Def Comrcl-Trans-EU>Returns](mailto:Def.Comrcl-Trans-EU>Returns)).

What reports are required for procurements each year?

10. Regulations 46 to 47 relate to procurers providing an aggregated statistical report to the Commission. This requirement stems from Article 65 and the rationale behind the report is to permit the Commission “to assess the results of applying the Directive”.

Annual statistics and reports required by the Commission

Procurers other than MOD

11. In accordance with Regulation 46(1) all procurers, with the exception of the MOD (see separate arrangements below), must submit an annual report to the Cabinet Office by no later than 31 July each year. This report should contain the information, set out in Annex A, on each contract and framework agreement they award under the DSPCR in the previous calendar year.

12. Each year, usually in the month of May, the Cabinet Office will issue a [Procurement Policy Note](#) requesting returns and prescribing the format for you to use.

MOD procurers

13. Acquisition teams must forward the information required at Annex A for each contract or framework agreement they award within 15 working days after each contact award using [DEFFORM 49B \(EU DSPCR Directives – Statistical Return\)](#) to [Def Comrcl-P3](#).

Submitting the national return to the Commission

14. [Def Comrcl-P3](#) in the MOD is responsible for merging the collated Cabinet Office return and the MOD return into a combined submission for the Commission.

Other statistics and reports required by the Commission

15. In accordance with Regulation 46(2), the Commission may require, from time to time, information in respect of a particular contract or framework agreement. This may include a contract or framework agreement that you excluded from the DSPCR through Regulation 7 (General exclusions) or is below the financial thresholds set out in Regulation 9 (Thresholds).

16. Procurers must notify the Commission immediately after entry into a cooperative programme (see Chapter 5 – General Exclusions in the DSPCR) based on the circumstances set out in Regulation 7(1)(c) unless one or more non-member State is involved in it. You must also notify the Commission when a

member State joins the programme later, again unless one or more non-member State is involved.

17. If there is a request from the Commission for information regarding specific defence or sensitive security contracts awards, either:

- a. the MOD will request the required information, in the appropriate format, from MOD procurers in accordance with Regulation 46(3); or
- b. the Cabinet Office will request the required information, in the appropriate format, from procurers other than MOD procurers in accordance with Regulation 46(3).

18. If required, the [Defence Commercial Policy, Processes and Procedures team](#) in the MOD will submit to the Commission any information from procurers other than the MOD that is collated by the Cabinet Office.

What are the key points to remember?

1. Procurers must submit an annual return to the Cabinet Office or MOD, as appropriate, providing specific details of contracts and framework agreements they award under the DSPCR.
2. Procurers must provide, from time to time, such other information, as appropriate, in respect of a particular contract or framework agreement as requested by the Cabinet Office or MOD as appropriate.
3. The MOD and the Efficiency and Reform Group (ERG) in the Cabinet Office are responsible for co-ordinating statistics and reports for onward transmission to the Commission on behalf of the UK under Regulations 46 and 47.

Annex A

DSPCR – Annual Statistics Report

1. As set out in Regulation 46, procurers must submit a report specifying the following information in relation to each contract it awards or framework agreement it concludes during the reporting period:
 - a. Whether the contract was a services contract, supply contract or works contract.
 - b. Whether the framework agreement was for the provision of services, for the purchase or hire of goods or for the carrying out of work or works.
 - c. The value (estimated if necessary) of the consideration payable under the contract or framework agreement.
 - d. Whether the restricted procedure, the negotiated procedure or the competitive dialogue procedure was used.
 - e. If you used the negotiated procedure without prior publication of a contract notice, under which provisions of Regulation 16 you used that procedure.
 - f. In the case of:
 - (1) a services contract or a framework agreement for the provision of services, the principal category of service provided or to be provided under the contract or framework agreement according to the nomenclature used in Schedule 2 of the Regulations;
 - (2) a supply contract or a framework agreement for the purchase or hire of goods, the type of goods purchased or hired or to be purchased or hired under the contract or framework agreement; and
 - (3) a works contract or a framework agreement for the carrying out of works, the principal category of works carried out or to be carried out under the contract or framework agreement according to the nomenclature used in Schedule 1 of the Regulations.
 - g. The nationality of any economic operator to which you award the contract or conclude the framework agreement with and the State in which that economic operator is established.