

Procurement Policy Note – EU Statistics on public procurement – annual return for calendar year 2011

Action Note 05/12

31 May 2012

Issue

1. Request for annual statistical returns on public procurement contracts awarded in calendar year 2011. These should be emailed to the Cabinet Office at eustatistics2011@cabinet-office.gsi.gov.uk.

Dissemination

2. Please circulate this Procurement Policy Note (PPN) and accompanying spreadsheet to those within your organisation with responsibility for undertaking the annual exercise. Further details on the collection arrangements are given in paragraph 8 below.

Contact

3. Enquiries about this paper should be addressed to the Cabinet Office Service Desk 0845 000 4999 servicedesk@cabinet-office.gsi.gov.uk. The requirements for sending statistical returns to the Cabinet Office are set out in paragraph 12 below.

Timing

4. Annual statistical returns must be sent to the Cabinet Office by **31 July 2012**. This is a requirement of the Public Contracts Regulations (PCR) 2006 that implement the public procurement directive 2004/18/EC. This deadline is to enable the information, which consists of some 7000 lines of data, to be collated in order to meet the deadline set out in the procurement directive¹.

¹ Articles 75 and 67 of the public procurement directives (2004/18/EC and 2008/17/EC respectively) oblige Member States to forward to the Commission a statistical report addressing public supply, services and works contracts awarded by contracting authorities and entities during the preceding year, by no later than 31 October of each year.

Background

5. The provision relating to the statistics exercise can be found in regulation 40 of the Public Contracts Regulations:
http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf.
6. A detailed note on the requirements for statistical returns is included at annex 2. Information is required for each contract or framework agreement awarded during calendar year 2011 where the estimated value is above the threshold of the Regulations (or is otherwise caught by the aggregation rules) and it does not fall within the scope of one of the specified exemptions contained within the Regulations. **This is a legal requirement, not a matter of discretion.** Please note that we do **not** require information on contracts “called-off” from framework agreements as it is information about the framework agreement itself that is required.
7. Those entities that appear in Schedule 1 of the Public Contracts Regulations or their successor bodies (i.e. new bodies now undertaking a function previously done by Schedule 1 entity) are also required to provide the overall value of contracts below the threshold of each of the Regulations. A list of these entities is attached at Annex 1 of this PPN. The list has been updated to reflect known changes at time of publication of this PPN.

Detail

Arrangements for the submission of data

8. Separate returns (including nil-returns) are required for each contracting authority, including Non-Departmental Public Bodies (NDPBs), Local Authorities, NHS bodies, relevant education bodies and Registered Social Landlords / Housing Associations. Returns in respect of Executive Agencies should be combined with those of the parent department unless an Agency appears as a separate entity in Annex 1 of this PPN. Similarly, returns from discrete operational units or individual purchasing units within a contracting authority should be incorporated into the main return and not separately identified.
 9. For supply contracts, the Ministry of Defence should submit separate returns for those contracts subject to the World Trade Organisation Government Procurement Agreement (GPA) and those that are subject to the EU rules only.
 10. Government departments should send returns to the Cabinet Office. **Contracting authorities that are not Government departments are required under the Regulations to submit their returns to the relevant parent body, for onward transmission to the Cabinet Office.** The requirement on such contracting authorities is enforceable through the courts. The responsible departments are
-

not required to aggregate the individual returns from the bodies for which they are responsible. They are, however, expected to ensure that the returns from those bodies are complete, credible and submitted on time.

11. Departments are requested to bring the contents of this paper to the attention of all contracting authorities for which they are responsible. The following entities are considered to be the responsibility of the administration or department shown alongside their title: -

Entity	Responsible Body
Authorities subject to the legislative competence of the Scottish Parliament	The Scottish Procurement Directorate
Authorities subject to the legislative competence of the National Assembly for Wales	Value Wales
Authorities subject to the legislative competence of the Northern Ireland Assembly	Department of Finance & Personnel Central Procurement Directorate
BBC	Department of Culture Media and Sport
Universities and further education establishments	Department for Business, Innovation and Skills
Housing Associations and Registered Social Landlords	Communities and Local Government

12. Departments are requested to ensure that returns are sent by e-mail to the Cabinet Office as soon as possible and not later than 31 July 2012 (see paragraph 4 above). Nil returns are required. They should be e-mailed to: eustatistics2011@cabinet-office.gsi.gov.uk . For reference purposes the name of the authority should be included when saving/naming the return. Any enquiries can be sent to the same email address.

13. Where a department is responsible for obtaining returns from a number of bodies, it will facilitate the process if the returns are forwarded to the Cabinet Office individually rather than waiting for a complete set.

Compliance cost information

14. Every third year the Cabinet Office is required to provide compliance cost information. As this was last collected in 2008, this additional data is required from local authorities and companies for year 2011.

Statistics on the Defence and Security Public Contracts Regulations (DSPCR) 2011

Background

The Defence and Security Public Contracts Regulations (DSPCR) 2011 applies to defence and sensitive security procurements by contracting authorities throughout England, Scotland, Wales and Northern Ireland where procurement procedures began on or after 21 August 2011 - [The Defence and Security Public Contracts Regulations 2011](#). Defence Equipment and Support (DE&S) within the Ministry of Defence (MOD) has the lead in reporting DSPCR activity to the EU on behalf of the UK. In DE&S this responsibility is held by DGDC Director Commercial Services CPaG 6.

Reporting Requirement

As with the PCR, DSPCR statistical information is required for each contract or framework agreement awarded during calendar year 2011 where the estimated value is above the threshold of the regulations and does not fall within the scope of one of the specified exemptions contained within the regulations. **Again, this is a legal requirement, not a matter of discretion.** The process for reporting varies with the status of the reporting body:-

DSPCR returns from all non MOD bodies: In accordance with Chapter 18, Para 11 DSPCR 2011 dated 21 August 2011 - http://www.mod.uk/NR/rdonlyres/C3A838F8-FB63-4B1B-A4DE-1DDCB13C920D/0/dspcr_chapter18_stast_reports_update2.pdf all DSPCR returns from non-MOD bodies are to be sent to eustatistics2011@cabinet-office.gsi.gov.uk using the relevant spreadsheet attached by 31 July 2012. Nil returns are required. ERG will collate these responses and forward to DE&S CPaG 6.

DSPCR returns from MOD (excluding Trading Fund Agencies): In accordance with Chapter 18, Para 13 DSPCR 2011 dated 21 August 2011 - http://www.mod.uk/NR/rdonlyres/C3A838F8-FB63-4B1B-A4DE-1DDCB13C920D/0/dspcr_chapter18_stast_reports_update2.pdf with the exemption of Trading Fund Agencies, all MOD bodies are to report DSPCR activity within using DEFFORM 49B (EU DSPCR Stats rev 09/11) within 15 working days after each contract award. Statistics will be automatically gathered electronically by CPaG throughout the year and no additional reporting is required.

DSPCR returns from MOD Trading Fund Agencies: DSPCR returns from MOD Trading Fund Agencies must be reported to CPaG 6 ([DES Comrcl CPaG-1A\(Smith, Colin C1\)](#)) within 15 days after each contract award using the Defform 49B.

Within DE&S, DES Comrcl-1A will collate all DSPCR returns and send a co-ordinated report to the EU on behalf of the UK. Any queries are to be directed to [DES Comrcl CPaG-1A](#).

**BODIES COVERED BY SCHEDULE 1 TO THE PUBLIC SUPPLY CONTRACTS
REGULATIONS (updated to reflect known changes)**

Cabinet Office

Office of the Parliamentary Counsel

Central Office of Information

Charity Commission

Crown Estate Commissioners (Vote Expenditure Only)

Crown Prosecution Service

Department for Business, Innovation and Skills

Competition Commission

Gas and Electricity Consumers' Council

Higher Education Funding Council for England

National Weights and Measures Laboratory

Office of Manpower Economics

Patent Office

Department of Communities and Local Government

Rent Assessment Panels

Department for Culture, Media and Sport

British Library

British Museum

Commission for Architecture and the Built Environment

The Gambling Commission

Historic Buildings and Monuments Commission for England (English Heritage)

Imperial War Museum

Museums, Libraries and Archives Council

National Gallery

National Maritime Museum

National Portrait Gallery

Natural History Museum

Science Museum

Tate Gallery

Victoria and Albert Museum

Wallace Collection

Department for Education

Department for Energy and Climate Change

Department for Environment, Food and Rural Affairs

Agricultural Dwelling House Advisory Committees

Agricultural Land Tribunals

Agricultural Wages Board and Committees

Cattle Breeding Centre

Countryside Agency

Plant Variety Rights Office

Royal Botanic Gardens, Kew

Royal Commission on Environmental Pollution

Department of Health

Dental Practice Board

National Health Service Strategic Health Authorities

NHS Foundation Trusts

NHS Trusts

Prescription Pricing Authority

Department for International Development

Department of the Procurator General and Treasury Solicitor

Legal Secretariat to the Law Officers

Department for Transport

Maritime and Coastguard Agency

Department for Work and Pensions

Disability Living Allowance Advisory Board

Independent Tribunal Service

Medical Boards and Examining Medical Officers (War Pensions)

Occupational Pensions Regulatory Authority

Regional Medical Service

Social Security Advisory Committee

Export Credits Guarantee Department

Foreign and Commonwealth Office

Wilton Park Conference Centre

Government Actuary's Department**Government Communications Headquarters****Home Office**

HM Inspectorate of Constabulary

House of Commons**House of Lords****Ministry of Defence**

Defence Equipment & Support

Meteorological Office

Ministry of Justice

Boundary Commission for England

Combined Tax Tribunal

Council on Tribunals

Court of Appeal - Criminal

Employment Appeals Tribunal

Employment Tribunals

HMCS Regions, Crown, County and Combined Courts (England and Wales)

Immigration Appellate Authorities

Immigration Adjudicators

Immigration Appeals Tribunal

Lands Tribunal

Law Commission

Legal Aid Fund (England and Wales)

Office of the Social Security Commissioners

Parole Board and Local Review Committees

Pensions Appeal Tribunals

Public Trust Office

Supreme Court Group (England and Wales)

Transport Tribunal

The National Archives**National Audit Office**

National Savings and Investments

National School of Government

Northern Ireland Assembly Commission

Northern Ireland Court Service

Coroners Courts

County Courts

Court of Appeal and High Court of Justice in Northern Ireland

Crown Court

Enforcement of Judgements Office

Legal Aid Fund

Magistrates' Courts

Pensions Appeals Tribunals

Northern Ireland, Department for Employment and Learning

Northern Ireland, Department for Regional Development

Northern Ireland, Department for Social Development

Northern Ireland, Department of Agriculture and Rural Development

Northern Ireland, Department of Culture, Arts and Leisure

Northern Ireland, Department of Education

Northern Ireland, Department of Enterprise, Trade and Investment

Northern Ireland, Department of the Environment

Northern Ireland, Department of Finance and Personnel

Northern Ireland, Department of Health, Social Services and Public Safety

Northern Ireland, Office of the First Minister and Deputy First Minister

Northern Ireland Office

Crown Solicitor's Office

Department of the Director of Public Prosecutions for Northern Ireland

Forensic Science Laboratory of Northern Ireland

Office of the Chief Electoral Officer for Northern Ireland

Police Service of Northern Ireland

Probation Board for Northern Ireland

State Pathologist Service

Office of Fair Trading

Office for National Statistics

National Health Service Central Register

Office of the Parliamentary Commissioner for Administration and Health Service Commissioners

Paymaster General's Office

Postal Business of the Post Office

Privy Council Office

Public Record Office

HM Revenue and Customs

The Revenue and Customs Prosecutions Office

Royal Hospital, Chelsea

Royal Mint

Rural Payments Agency

Scotland, Auditor-General

Scotland, Crown Office and Procurator Fiscal Service

Scotland, General Register Office

Scotland, Queen's and Lord Treasurer's Remembrancer

Scotland, Registers of Scotland

The Scotland Office

The Scottish Ministers

Architecture and Design Scotland

Crofters Commission

Deer Commission for Scotland

Lands Tribunal for Scotland

National Galleries of Scotland

National Library of Scotland

National Museums of Scotland

Royal Botanic Garden, Edinburgh

Royal Commission on the Ancient and Historical Monuments of Scotland

Scottish Further and Higher Education Funding Council

Scottish Law Commission

Community Health Partnerships

Special Health Boards

Health Boards

The Office of the Accountant of Court

High Court of Justiciary

Court of Session

HM Inspectorate of Constabulary

Parole Board for Scotland

Pensions Appeal Tribunals

Scottish Land Court

Sheriff Courts

Scottish Police Services Authority

Office of the Social Security Commissioners

The Private Rented Housing Panel and Private Rented Housing Committees

Keeper of the Records of Scotland

The Scottish Parliamentary Body Corporate

HM Treasury

United Kingdom Debt Management Office

The Wales Office (Office of the Secretary of State for Wales)

The Welsh Ministers

Higher Education Funding Council for Wales

Local Government Boundary Commission for Wales

The Royal Commission on the Ancient and Historical Monuments of Wales

Valuation Tribunals (Wales)

Welsh National Health Service Trusts and Local Health Boards

Welsh Rent Assessment Panels

EC PUBLIC PROCUREMENT: STATISTICS FOR 2011

General requirements

The attached spreadsheet should be used for completing the statistical returns, including NIL returns. Information is required in respect of each supply, work and Part A service awarded in 2011. All authorities must provide a contact name, e-mail address and telephone number.

In obtaining and preparing returns, departments should note the following general points:

- a) EU procurement Thresholds applicable in 2011:

	SUPPLY	WORKS	SERVICES
Entities listed in Schedule 1 (See Annex A)	£101,323	£3,927,260	£101,323*
Other public sector contracting authorities	£156,442	£3,927,260	£156,442

*With the exception of the following services, which have a threshold of £156,442

Part B (residual) services

Research & Development Services (Category 8)

The following Telecommunications services in Category 5

- o CPC 7524 - Television and Radio Broadcast services
- o CPC 7525 - Interconnection services
- o CPC 7526 - Integrated telecommunications services

Subsidised services contracts under regulation 34 of the Public Contracts Regulations 2006

- b) Contracting authorities are required to provide statistics for each contract at or above the relevant threshold awarded under the Regulations during 2011 (but see note I. below on aggregation). Contracting authorities which are included in Schedule 1 to the Public Contracts Regulations (or their successors) are also required to report the estimated total value of their below threshold contracts.
- c) Only contracts which were awarded during calendar year 2011 should be included in returns. Contracts for which the award procedure commenced in 2011 but for which

the contract was not awarded until 2012 should not be included.

- d) Actual or estimated total contract values, exclusive of VAT, should be given. **Please do not include annual figures.**
- e) Contracting authorities should include contracts which they have themselves awarded. This includes procurements for which another contracting authority has acted as an agent. A procurement by one department from another should be included (by the former) only if the requirement was put out to competition and awarded under the Regulations. Details of procurements not covered by contracts, for example customer service agreements with gas or water companies, are not required. Purchase orders are regarded as contracts.
- f) A number of contracting authorities have formed consortia to act as central purchasing bodies. Such consortia are themselves contracting authorities and should submit a return, either under their own name or one of the consortium members.
- g) Wherever possible, the price at which a contract was awarded should be used. If this is not possible, e.g. because the contract was for call-offs up to (but not necessarily reaching) a certain value, or contains a variation of price formula or provides the contracting authority with an option to extend - the best estimate of the total value should be used.
- h) Where a **framework agreement** has been awarded in accordance with the rules this should be indicated on the spreadsheet. The value shown should be the estimated value of anticipated call-offs or the maximum possible value of call-offs. Where more than one framework agreement has been awarded in response to a single requirement authorities should estimate the likely total value of call-offs. Authorities should **not** report the value of call-offs, either from their own or from centrally arranged frameworks that have been awarded on their behalf. The assumption should be that the authority that has awarded the framework would report the information. Similarly Schedule 1 bodies should not include any below threshold information on such centrally arranged frameworks.
- i) Care should be taken to state the nationality of suppliers and not the origin of goods or services. For instance, a contract for foreign built computers bought from a UK dealer or a UK subsidiary of the manufacturer should be treated as a UK contract.
- j) CPV codes must be used. The relevant code can be obtained from the contract notice or contract award notice used for the procurement in question. Alternatively they can be downloaded from the SIMAP website – <http://simap.europa.eu/>. **We have had clarification from the European Commission that it is only necessary to include the category of CPV code i.e. the first five digits.** For example, “15321” is sufficient for procurements for orange juice (CPV 15321100-5).
- k) Contracting Authorities should indicate whether contracts advertised in the Official Journal (OJEU) were awarded under the open, restricted, competitive dialogue or negotiated procedure. For contracts awarded under the negotiated procedure, whether advertised in the OJEU or not, the appropriate justification for the use of that procedure should be given. The text of the possible justifications set out in the regulations is reproduced at Appendix A.
- l) Contracts that are below the threshold should be included in the detailed returns where they have been advertised because of the aggregation rules. This applies where they are part of a series of contracts for goods of the same type which, in aggregate, exceed the threshold.

JUSTIFICATIONS FOR USE OF THE NEGOTIATED PROCEDURE

Contracting authorities should indicate in their return the justification for non-advertisement of a contract by reference to the appropriate letter **(A-O)** which relate to the specific provisions shown below, taken from regulations 13 and 14 of the Public Contracts Regulations.

Part 1

Use of the negotiated procedure with prior publication of a contract notice.

A

13. A contracting authority may use the negotiated procedure with the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—

(a) subject to regulation 14(1)(a)(i), in the event that the procedure leading to the award of a contract by the contracting authority using the open procedure, the restricted procedure or the competitive dialogue procedure was discontinued because of—

(i) irregular tenders; or

(ii) unacceptable tenders following an evaluation made in accordance with regulation 15(11) or 16(7);

but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;

B

(b) exceptionally, when the nature of the work or works to be carried out, the goods to be purchased or hired or the services to be provided under the contract or the risks attaching to them are such as not to permit prior overall pricing;

C (services only)

(c) in the case of a public services contract, when the nature of the services to be provided, in particular in the case of services specified in category 6 of Part A of Schedule 3 and

intellectual services, such as services involving the design of work or works, is such that specifications cannot be established with sufficient precision to permit the award of the contract using the open procedure or the restricted procedure; or

D (works only)

(d) in the case of a public works contract, when the work or works are to be carried out under the contract solely for the purpose of research, testing or development but not with the aim of ensuring profitability or to recover research and development costs.

Part 2

Use of the negotiated procedure without prior publication of a contract notice

14. —(1) A contracting authority may use the negotiated procedure without the prior publication of a contract notice in accordance with regulation 17(3) in the following circumstances—

E

(a) in the case of a public contract—

(i) when a contracting authority is using the negotiated procedure in accordance with regulation 13(a) and invites to negotiate the contract every economic operator which submitted a tender following an invitation made during the course of the discontinued open procedure or restricted procedure (not being a tender which was excluded in accordance with regulation 15(11) or 16(7));

F

(ii) subject to paragraph (2), in the absence of tenders, suitable tenders or applications in response to an invitation to tender by the contracting authority using the open procedure or the restricted procedure but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered in the negotiated procedure;

G

(iii) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the public contract may be awarded only to a particular economic operator;

H

(iv) 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—

(aa) regulation 15 for the open procedure;

(bb) regulation 16 for the restricted procedure; or

(cc) regulation 17 for the negotiated procedure;

cannot be met;

I (supplies only)

(b) in the case of a public supply contract—

(i) when the goods to be purchased or hired under the contract are to be manufactured solely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired with the aim of ensuring profitability or to recover research and development costs;

J (supplies only)

(ii) subject to paragraph (3), when the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or in addition to, existing goods or an installation and when to obtain the goods from a supplier other than the supplier which supplied the existing goods or the installation would oblige the contracting authority to acquire goods having different technical characteristics which would result in—

(aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or

(bb) disproportionate technical difficulties in the operation

and maintenance of the existing goods or the installation;

K (supplies only)

(iii) for the purchase or hire of goods quoted and purchased on a commodity market;

L (supplies only)

(iv) to take advantage of particularly advantageous terms for the purchase of goods in a closing down sale or in a sale brought about because a supplier is subject to a procedure referred to in regulation 23(4)(a), (b) or (c);

M (services only)

(c) in the case of a public services contract, when the rules of a design contest require the contract to be awarded to the successful contestant or to one of the successful contestants, provided that all successful contestants are invited to negotiate the contract;

N (works or services only)

(d) in the case of a public works contract or a public services contract—

(i) subject to paragraph (4), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with the contracting authority to carry out additional work or works or provide additional services which were not included in the project initially considered or in the original public works contract or public services contract but which through unforeseen circumstances have become necessary, and such work, works or services—

(aa) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major inconvenience to the contracting authority; or

(bb) can be carried out or provided separately from those under the original contract but are strictly necessary to the later stages of the performance of

that contract; and

O (works or services only)

(ii) subject to paragraph (5), when a contracting authority wants an economic operator which has entered into a public works contract or a public services contract with that contracting authority to carry out new work or works or provide new services which are a repetition of the work or works carried out or the services provided under the original contract and which are in accordance with the project for the purpose of which the first contract was entered into.

The Service Desk will also channel queries to the appropriate second-line support. We look forward to hearing from you.

You can contact the Service Desk 8am – 6pm Monday to Friday:

T: 0845 000 4999
E: servicedesk@cabinet-office.gsi.gov.uk

© Crown copyright 2012