

# Procurement Policy Note – EU statistics on utilities sector procurement – annual return for calendar year 2011

Action Note 06/12

31 May 2012

## Issue

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

## Dissemination

2. Please circulate this Procurement Policy Note (PPN) and accompanying spreadsheet to those within departments with responsibility for coordinating the collection of procurement statistics. **Please note this exercise is in respect of the utility sector entities only and not for use by public bodies purchasing utility products or services (gas, electricity etc.).**

## Contact

3. Enquiries about this paper should be addressed to the Cabinet Office Service Desk 0845 000 4999 [servicedesk@cabinet-office.gsi.gov.uk](mailto:servicedesk@cabinet-office.gsi.gov.uk). The requirements for sending statistical returns to the Cabinet Office are set out in paragraph 8 below.

## Timing

4. The Utilities Contracts Regulations 2006 that implement the utilities procurement directive 2004/17/EC require that annual statistical returns must be sent to the Cabinet Office by **31 July 2012**.<sup>1</sup>

## Background

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<sup>1</sup> 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.

5. A detailed outline of the requirements for these statistical returns can be found at Annex 1 below.
6. However, in brief:  
**Below threshold information:** The Utilities Contracts Regulations require each utility to produce reports on the total estimated value of supplies, works and services contracts awarded by the utility in each area of activity to which the Regulations apply, but where the individual contracts are excluded from the Regulations because their estimated value is below the threshold.  
  
**Above threshold information:** In addition, utilities undertaking certain activities are required by the Regulations to provide information on contracts above the threshold.
7. A detailed note on the requirements for statistical returns is included at annex 1. The provision relating to the statistics exercise can be found in regulation 38 of the Utilities Contracts Regulations:  
[http://www.opsi.gov.uk/si/si2006/uksi\\_20060006\\_en.pdf](http://www.opsi.gov.uk/si/si2006/uksi_20060006_en.pdf).

## Detail

### Arrangements for the submission of data

8. Departments and devolved administrations are asked to ensure that utilities in their fields of responsibility are made aware of these requirements and that the necessary information is provided to them for onward submission to the Cabinet Office. The following are deemed to be the responsible departments for specific utility sectors:  
BIS – electricity, gas coal, postal services.  
DEFRA – water, waterways  
DfT - rail, buses, trams, ports, airports  
Devolved Administrations (where not provided for by the above departments).
9. Departments should send utilities returns to the Cabinet Office no later than 31 July 2012. Nil returns are required. They should be emailed to [eustatistics2011@cabinet-office.gsi.gov.uk](mailto:eustatistics2011@cabinet-office.gsi.gov.uk).
10. 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.
11. In notifying the utilities in the areas in which they are most closely concerned, departments and devolved administrations may wish to use the attached Annex to remind them of the:  
Categories of activity;  
Thresholds that applied in 2010  
Requirement for completion of above-threshold statistics for some utilities  
Provision in the Regulations which allow the total value of utilities' sub-threshold contracts to be estimated if necessary; and

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](mailto:eustatistics2011@cabinet-office.gsi.gov.uk). For reference purposes the name of the utility should be included when saving/naming the return. Any enquiries can be sent to the same email address.

### **Compliance cost information**

13. 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.

## ANNEX 1

### UTILITIES PROCUREMENT: STATISTICS FOR 2010

#### 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:

EU procurement Thresholds applicable in 2011:

<u>Supplies and Services</u>	£313,694
<u>Works</u>	£3,927,260

#### (i) Below threshold information

Regulation 38(1)(a) of the Utilities Contracts Regulations 2006 (as amended by SI 2000/2848) requires every utility to report the total value, estimated if necessary, of the works, supplies and part A service contracts awarded by it in the previous calendar year for each relevant area of activity, but which were excluded from the Regulations because their estimated value was less than the threshold. The purpose of the report is to enable the European Commission to monitor the application of the thresholds

The relevant areas of activity are set out in the Schedule 1 to the Regulations:

(Parts A-C) the production, transport or distribution of drinking water, hydraulic engineering, irrigation, land drainage or the disposal or treatment of sewage;

(Parts D-F) the production, transport or distribution of electricity;

(Parts G-L) the transport or distribution of gas or heat;

(Part M) the exploration for and extraction of oil or gas;

(Part N) the exploration for and extraction of coal or other solid fuels;

(Part O) the provision of airport facilities;

(Part P) the provision of maritime or inland port or other terminal facilities;

(Part Q) railway services;

(Parts R-S) urban railway, tramway, trolleybus or bus services, and;

(Part T) postal services

## **(ii) Above threshold information**

Regulation 38(3) requires utilities undertaking certain activities (see below) to provide information on contracts above the threshold. This relates to contracts awarded in 2010.

Relevant activities as set out in Schedule 1 to the Regulations are:

(Parts A-C) the production, transport or distribution of drinking water, hydraulic engineering, irrigation, land drainage or the disposal or treatment of sewage;

(Parts D-F) the production, transport or distribution of electricity;

(Part O) the provision of airport facilities;

(Part P) the provision of maritime or inland port or other terminal facilities, and

(Part R) urban railway, tramway, trolleybus or bus services;

### Detail on information to be provided

- a. Only contracts which were awarded during calendar year 2010 should be included in returns. Contracts for which the award procedure commenced in 2010 but for which the contract was not awarded until 2011 should not be included.
- b. Actual or estimated total contract values, exclusive of VAT, should be given.  
**Please do not include annual figures.**
- c. Entities should include contracts which they have themselves awarded. This includes procurements for which another entity or body has acted as an agent. 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.
- d. A number of entities 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.
- e. 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.
- f. 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.

- g. 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.
- h. 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 first five digits of these codes. For example, “15321” is sufficient for procurements for orange juice (CPV 15321100-5).
- i. Entities should indicate whether contracts advertised in the Official Journal (OJEU) were awarded under the open, restricted or negotiated procedure. For contracts awarded under the negotiated procedure, and where one of the derogations from the need to publicise the call from competition was applied, the appropriate justification should be given. The text of the possible justifications set out in the regulations is reproduced at Appendix A.
- j. 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.

## **ANNEX 2 – Appendix A**

### **JUSTIFICATIONS FOR THE AWARD OF A CONTRACT WITHOUT A CALL FOR COMPETITION -REGULATION 17 OF THE UTILITIES CONTRACTS REGULATIONS 2006**

#### Regulation

17(1)(a) - in the absence of tenders, suitable tenders or applications in response to a procedure with a call for competition but only if the original terms of the proposed contract offered in the discontinued procedure have not been substantially altered;

17(1)(b) - when the contract is to be awarded purely for the purposes of research, experiment, study or development but not where it has the purpose of securing profit or of recovering research and development costs and insofar as its award will not prejudice the competitive award of subsequent contracts which are, in particular, for the same purpose;

17(1)(c) - when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may only be performed by a particular economic operator;

17(1)(d) - when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the utility the time limits specified in regulations 22(2) to (11) cannot be met;

17(1)(e) -when the contract to be awarded is a supply contract and the goods to be purchased or hired under the contract are required by the utility 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 utility to acquire goods having different technical characteristics which would result in -

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

(ii) disproportionate technical difficulties in the operation and maintenance of the original goods or the installation

17(1)(f) - when a utility wants an economic operator which has entered into a works contract or services contract with the utility to carry out additional works or provide additional services were not included in the project initially considered or in the original works contract or services contract but which through unforeseen circumstances have become necessary and such work, works or services-

(i) cannot for technical or economic reasons be carried out or provided separately from those under the original contract without major convenience to the utility, or

(ii) 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;

17(1)(g) - subject to paragraph (2), when the utility wants an economic operator which has entered into a works contract with that utility following a call for competition which satisfies the requirement of regulation 16(1) to carry out new work or works which are a repetition of the work or 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.

17(1)(h) -in respect of a supply contract for the purchase or hire of goods quoted and purchased on a commodity market

17(1)(i) -when the contract to be awarded is to be awarded under a framework agreement which has been concluded in accordance with these Regulations and to which the provisions of regulation 18 apply

17(1)(j) - when the contract to be awarded is a supply contract, to take advantage of a particularly advantageous bargain available for a very short time at a price considerably lower than normal market prices

17(1)(k) - when the contract to be awarded is a supply contract, to take advantage of particularly advantageous conditions 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 26(5)(a), (b) and (c); and

17(1)(l)- in the case of services contracts, 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.

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](mailto:servicedesk@cabinet-office.gsi.gov.uk)

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