

June 2010/16

Core funding/operations

Request for data

Completed survey forms should be
returned to HEFCE by Friday 23 July 2010

This document requires all institutions to report the contracts they have awarded in the calendar year 2009, in accordance with the European Community's Directives on Public Procurement.

EU statistics on public procurement – annual return for calendar year 2009

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EU statistics on public procurement – annual return for calendar year 2009

To Heads of HEFCE-funded higher education institutions
English regional purchasing consortia

Of interest to those responsible for Finance, Planning, Services

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Enquiries to Stephen Butcher
HEFCE Head of Procurement and Shared Services
tel 0117 931 7425
e-mail s.butcher@hefce.ac.uk

Executive summary

Purpose

1. This document requires all HEFCE-funded higher education institutions to report the contracts they have awarded in the calendar year 2009, in accordance with the European Community's Directives on Public Procurement.

Key points

2. The EU Procurement Directives have been implemented into national law in the UK by Regulations. Revised Regulations came into force on 31 January 2006 to implement new Procurement Directives.

3. The information required is set out in the separate EU statistics return form. We collect this information on behalf of the Department for Business, Innovation and Skills.

4. As in previous years, institutions are required to submit returns electronically, and to use Common Procurement Vocabulary codes.

5. Returns for 2009 should follow the same format as for 2008. The provision relating to the statistics exercise can be found in regulation 40 of the Public Contracts Regulations: www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf

6. Information is required for **each** contract or framework agreement awarded during calendar year 2009 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 information is not required about contracts 'called off' from framework agreements because it is information about the framework agreement itself that is required.

7. The Public Contracts Regulations require that annual statistical returns must be sent to the Office of Government Commerce (OGC) by **31 July 2010**. This is to enable the information, which consists of some 7,000 lines of data, to be collated in order to meet the deadline set out in the Procurement Directive.

Action required

8. Completed survey forms should be returned by e-mail to HEFCE (EUstatistics@hefce.ac.uk) by **Friday 23 July 2010**. Returns must be made on the EU Statistics Return 2009, available to download alongside this document at www.hefce.ac.uk under Publications. Where a nil return applies, institutions should still complete and return the form.

Background

9. The EU Procurement Directives set out the legal framework for public procurement. They apply when public authorities seek to acquire goods, services, civil engineering or building works. They set out procedures which must be followed before awarding a contract when its value exceeds set thresholds, unless it qualifies for a specific exemption.
10. The Directives have been implemented into national law in the UK by Regulations. Revised Regulations came into force on 31 January 2006 to implement new Procurement Directives. These new Directives clarify, simplify and update the previous regime and introduce a number of new provisions.
11. The Department for Business, Innovation and Skills (BIS) is responsible for gathering statistical returns from the higher education institutions covered by the Regulations. These returns are submitted to the Office of Government Commerce (OGC) and then to the European Commission.
12. BIS has asked us to collect information for HEFCE-funded higher education institutions for the calendar year 2009. The information required is set out in the EU Statistics Return 2009.

Guidance

13. Any queries about the UK Public Contracts Regulations 2006, or the EC Directives on Public Procurement, should be referred to Stephen Butcher, HEFCE Head of Procurement (tel 0117 931 7425, e-mail s.butcher@hefce.ac.uk).
14. The existence of devolved budgetary authority within an institution does not absolve that institution from ensuring that it complies with the EU Directives. Responsibility for compliance rests with the institution; failure to comply is a breach of the Regulations and leaves it open to legal challenge.

Returns

15. The OGC requires returns to be submitted electronically. A survey form in Excel spreadsheet format, 'EU Statistics return – 2009', is available to download alongside this document, at www.hefce.ac.uk under Publications. This form also includes guidance.
16. Institutions should not include contracts which have been placed through one of the four university regional purchasing consortia. Each consortium should make its own return.
17. The completed survey form should be returned as an e-mail attachment to HEFCE (EUstatistics@hefce.ac.uk) by **Friday 23 July 2010**.
18. Where a nil return applies, institutions must still complete and return the survey form with the relevant sections completed.

General requirements

19. Information is required in respect of **each** supply, work and Part A service contract awarded in 2009. All institutions must provide a contact name, e-mail address and telephone number.

20. In obtaining and preparing returns, institutions should note the following general points:

a. The thresholds for 2009 were:

Supplies	£139,893
Services	£139,893*
Works	£3,497,313

* A threshold of £139,893 applies to the following services for all authorities:

Part B (residual) services

Research & Development Services (Category 8)

The following telecommunication services in Category 5

CPC 7524 – Television & Radio Broadcast Services

CPC 7525 – Interconnection Services

CPC 7526 – Integrated telecommunication 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 2009 (but see note I below on aggregation).

c. Only contracts which were awarded during calendar year 2009 should be included in returns. Contracts for which the award procedure commenced in 2009 but for which the contract was not awarded until 2010 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 – for example 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.
- 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. Common Procurement Vocabulary (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, that is to say 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 of the EU (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 Annex 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.

List of abbreviations

BIS	Department for Business, Innovation and Skills
CPC	Central Products Classification
CPV	Common Procurement Vocabulary
EC	European Community
EU	European Union
HEFCE	Higher Education Funding Council for England
OGC	Office of Government Commerce
OJEU	Official Journal of the European Union

Annex A 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

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 (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 discounted 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 (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.
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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 –

- (a) In the case of a public contract –

E	(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));
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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;
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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;
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H	<p>(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 –</p> <p>(aa) regulation 15 for the open procedure;</p> <p>(bb) regulation 16 for the restricted procedure; or</p> <p>(cc) regulation 17 for the negotiated procedure; cannot be met;</p>
(b) In the case of a public supply contract –	
I (supplies only)	(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)	<p>(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 –</p> <p>(aa) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract; or</p> <p>(bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;</p>
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)	<p>(d) In the case of a public works contract or a public services contract -</p> <p>(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 –</p> <p>(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</p> <p>(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</p>
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.