

June 2004/25

Core funding/operations

Request for data

Completed survey forms should be returned to HEFCE by Friday 2 July 2004

This document requires all institutions to report the contracts they have awarded in the calendar year 2003, in accordance with the European Community's Directives on Public Procurement. We collect this information on behalf of the DfES. Returns may be made in hard copy or by e-mail. Where a nil return applies, institutions should still complete the forms.

Public supply, works and services contracts awarded in 2003

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Public supply, works and services contracts awarded in 2003

To	Heads of HEFCE-funded higher education institutions English regional purchasing consortia
Of interest to those responsible for	Finance, Planning, Services
Reference	2004/25
Publication date	June 2004
Enquiries to	Contacts listed in paragraph 9

Executive summary

Purpose

1. This document requires all HEFCE-funded higher education institutions to report the contracts they have awarded in the calendar year 2003, in accordance with the European Community's Directives on Public Procurement.

Key points

2. The EC directives are put into effect by the UK Regulations on Public Supply, Works and Services Contracts.

3. The information required is set out in the attached survey forms. We collect this information on behalf of the Department for Education and Skills (DfES).

4. Institutions should not include contracts that have been placed through one of the five universities purchasing consortia. Each consortium should make its own return.

Action required

5. Completed survey forms should be returned to HEFCE **by Friday 2 July 2004**. Returns may be made in hard copy by post, or electronically by e-mail. **Where a nil return applies, institutions should still complete and return the forms.**

Background

6. The UK Regulations on Public Supply, Works and Services Contracts put into effect the EC's Directives on Public Procurement. The DfES is responsible for gathering statistical returns from the higher education institutions covered by the regulations. These returns are submitted to the Treasury and then to the European Commission.

7. Under the regulations, institutions must ensure that contracts in excess of the relevant financial thresholds are advertised throughout the European Community, in the Official Journal of the European Communities (OJEC). They must also provide information about expenditure on procurement.

8. The DfES has tasked us to collect information for HEFCE-funded higher education institutions for the calendar year 2003. The information required is set out in the attached survey forms.

Guidance

9. Any queries about the UK Regulations on Public Supply, Works and Services Contracts, or the EC Directives on Public Procurement, should be referred to one of the following:

- Stephen Butcher, HEFCE Head of Procurement, tel 0117 931 7425
- Laraine Scarr at the DfES in Darlington, tel 0325 392656.

10. The existence of devolved budgetary authority within an institution does not absolve that institution from ensuring that it complies with the EC 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

11. Institutions are required to complete Forms A1, A2 and A3, and also Forms B1, B2, and B3 if appropriate. Returns may be completed in hard copy using printed copies of the forms, or by returning electronic copies of the completed forms as e-mail attachments.

12. Annex A lists the Nomenclature for Industrial Products (NIPRO) codes, for completing Form B1. Annex B lists the General Industrial Classification of Economic Activities within the European Community (NACE) codes, for completing Form B2. Annex C lists the Central Products Classification (CPC) codes, for completing Form B3. In each case only the main code, shown in bold type in the first column, is required. We are aware of the difficulties in identifying an appropriate code in some cases, for example for purchases of software. Advice from the Treasury is that institutions should use the nearest appropriate code available – for instance classifying software under NIPRO code 33 for office machinery.

13. In Forms B1, B2 and B3, where institutions report the use of the negotiated procedure, they are also asked to identify under which provision of regulation 10(2) that procedure was used. Annex D lists the provisions for each of the supply, works and services regulations. Note that the numbering of the provisions is different in each case.

14. **Institutions should not include contracts which have been placed through one of the five universities purchasing consortia. Each consortium should make its own return.**

15. When naming the nationality of the person to whom the contract was awarded, the nationality of the contractor who actually fulfilled the contract should be recorded. For example, if a contract was with a German company via a UK subsidiary or agent, the nationality should be recorded as UK.

16. **In Forms B1, B2 and B3 the total contract value should be recorded, not the annual cost.** For example, if a three-year contract was awarded at £60,000 per annum, then £180,000 should be recorded.

17. The completed survey forms should be returned to **Ruth Carpenter at HEFCE** by **Friday 2 July 2004**. E-mail returns should be addressed to r.carpenter@hefce.ac.uk. Hard copy returns should be sent to:

Ruth Carpenter
HEFCE
Northavon House
Coldharbour Lane
BRISTOL
BS16 1QD

18. **Where a nil return applies, institutions must still complete and return the forms with the relevant sections ticked.**

List of abbreviations

CPC	Central Products Classification
DfES	Department for Education and Skills
EC	European Community
EU	European Union
HEFCE	Higher Education Funding Council for England
NACE	Nomenclature générale des activités économiques dans les communautés Européennes (General industrial classification of economic activities within the European communities)
NIPRO	Nomenclature for Industrial Products
OJEC	Official Journal of the European Communities

Annex A

NIPRO codes for supplies contracts

NIPRO Class	Description	Group
01/03	Agriculture, forestry, fishing	
11	Extraction and briquetting of solid fuels	
12	Coke	
14	Petroleum	
15	Nuclear fuels	
16	Electricity/gas/other forms of energy	
17	Water supply	
21	Metals - extraction and preparation ores	
22	Metals - production and preliminary processing	
23	Extraction of non-metallic minerals	
24	Manufacture of non-metallic minerals	
	Heat insulating and refractory goods	248.1
	Ceramics - tableware, kitchenware	248.6
	Porcelain - tableware, kitchenware	248.7
25	Chemical industry	
	Basic industrial chemicals	251
	Petrochemicals	252
	Paints, etc	255
	Glues and gelatine	256.2
	Pharmaceuticals	257
	Soaps and synthetic detergents	258.1
26	Man-made fibres	
31	Metal goods	
	Ferrous metal foundries	311.1
	Non-ferrous metal foundries	311.2
	Tools and finished metal goods	316
	Hand tools and agricultural tools	316.1
	Cutlery	316.2
	Domestic heating appliances	316.5
	Other metal goods	316.9
32	Mechanical engineering	
	Agricultural machinery	321.1
	Tractors	321.2
	Machine tools	322
	Food, drink and tobacco processing machinery	324.11
	Rubber and plastics working machinery	324.3
	Mining machinery	325.1
	Iron and steel foundry machinery	325.2
	Mechanical lifting and handling equipment	325.5
	Transmission equipment	326

	Printing and bookbinding machinery	327.2
	Laundry and dry-cleaning equipment	327.3
	Other machinery	328
	Oil hydraulic equipment	328.3051
	Pneumatic control equipment	328.3055
	Space heating, ventilating and air-conditioning equipment	328.4
	Refrigeration equipment	328.5
	Non-electric industrial furnaces and ovens	328.6
33	Office machinery and data processing equipment	
	Office machines	330.01
	Data processing equipment	330.05
34	Electrical goods	
	Insulated wire and cable	341
	Electrical motors	342.1
	Electricity generators and transformers	342.2
	Switches	342.3
	Switchgear	342.4
	Electrical equipment for industrial use	343.1
	Batteries and accumulators	343.2
	Telecommunications equipment	344.1
	Electrical and electronic measuring and recording equipment	344.2
	Electro-medical equipment	344.3
	Radio receivers	345.11
	Television receivers	345.12
	Records and pre-recorded tapes	345.2
	Video recorders	345.3
	Video, discs and tapes	345.4
	Domestic electrical appliances	346
	Lighting equipment	347
35	Motor vehicles	
	Vehicles and engines	351
	Vehicle bodies	352
	Parts and accessories	353
36	Other transport	
37	Instruments	
	Measuring, checking and precision instruments	371
	Medical and surgical equipment	372
	Optical instruments	373.2
41/42	Food, drink and tobacco	
43	Textiles	
	Wool	431
	Cotton	432
	Silk	433
	Flax, hemp	434
	Knitted goods	436
	Carpets	438

	Other textile goods	439
44	Leather and leather goods	
	Leather and leather substitute products	442
	Leather gloves	442.3
45	Footwear and clothing	
	Footwear	451
	Clothing	453
	Household textiles	455
46	Timber and wooden furniture	
	Wooden furniture	467
47	Paper and paper products	
	Pulp, paper and board	471
	Processed paper and board	472
	Printing and allied services	473
48	Rubber and plastics	
	Rubber products	481
	Rubber tyres	481.1
	Plastic products	483
49	Other manufactured goods	

Annex B

NACE codes for works contracts

Class: 50 Building and civil engineering

Group	Descriptions	Subgroups and items
500	General building and civil engineering work (without any particular specialisation) and demolition work	
	General building and civil engineering work (without any particular specialisation)	500.1
	Demolition work	500.2
501	Construction of flats, office blocks, hospitals and other buildings, both residential and non-residential	
	General building contractors	501.1
	Roofing	501.2
	Construction of chimneys, kilns and furnaces	501.3
	Waterproofing and damp-proofing	501.4
	Restoration and maintenance of outside walls (repainting, cleaning, etc)	501.5
	Erection and dismantlement of scaffolding	501.6
	Other specialised activities relating to construction work (including carpentry)	501.7
502	Civil engineering construction of roads, bridges, railways, etc	
	General civil engineering work	502.1
	Earth-moving (navvying)	502.2

	Construction of bridges, tunnels and shafts, drilling	502.3
	Hydraulic engineering (rivers, canals, harbours, flows, locks and dams)	502.4
	Road-building (including specialised construction of airports and runways)	502.5
	Specialised construction work relating to water (irrigation, land drainage, water supply, sewage disposal, sewerage and so on)	502.6
	Specialised activities in other areas of civil engineering	502.7
503	Installation (fittings and fixtures)	
	General installation work	503.1
	Gas fitting and plumbing, and the installation of sanitary equipment	503.2
	Installation of heating and ventilating apparatus (central heating, air-conditioning, ventilation)	503.3
	Sound and heat insulation, insulation against vibration	503.4
	Electrical fittings	503.5
	Installation of aerials, lightning conductors, telephones, etc	503.6
504	Building completion work	
	General building completion work	504.1
	Plastering	504.2
	Joinery, primarily engaged in on the site assembly and/or installation (including the laying of parquet flooring)	504.3
	Painting, glazing, paper hanging	504.4
	Tiling and otherwise covering floors and walls	504.5
	Other building completion work (putting in fireplaces, etc)	504.6

Annex C

Category codes for priority services contracts

Part A

Category number	Description	CPC Reference
1	Maintenance and repair of vehicles and equipment	6112, 6122, 633, 886
2	Land transport services including armoured car and courier services, except transport of mail and transport by rail	712 (except 71235), 7512, 87304
3	Air transport services of passengers and freight, except transport of mail	73 (except 7321)
4	Transport of mail by land and by air	71235, 7321
5	Telecommunications services	752
6	Financial services	81 (part), 812, 814
	i) Insurance services	
	ii) Banking and investment services	
7	Computer and related services	84
8	R & D services	85
9	Accounting, auditing and book-keeping services	862
10	Market research and public opinion polling services	864
11	Management consultancy services and related services	865, 866
12	Architectural services; engineering services and integrated engineering services; urban planning and landscape architectural services; related scientific and technical consulting services; technical testing and analysis services	867
13	Advertising services	871

14	Building-cleaning services and property management services	874, 82201 to 82206
15	Publishing and printing services on a fee or contract basis	88442
16	Sewage and refuse disposal services; sanitation and similar services	94

Part B

17	Hotel and restaurant services	64
18	Transport by rail	711
19	Transport by water	72
20	Supporting and auxiliary transport services	74
21	Legal services	861
22	Personnel placement and supply services	872
23	Investigation and security services, other than armoured car services	873 (except 87304)
24	Education and vocational education services	92
25	Health and social services	93
26	Recreational, cultural and sporting services	96
27	Other services	

Annex D1

Justifications for the use of the negotiated procedure – supplies contracts

Note that the regulations for supplies, works and services contracts number the provisions of regulation 10(2) differently in each case.

Regulation

10(2)(a) In the event that the procedure leading to the award of a public supply contract by the contracting authority using the open or restricted procedure was discontinued –

- (i) Because of irregular tenders, or
- (ii) Where suppliers have been treated as ineligible on the grounds specified in regulation 14 (criteria for the rejection of suppliers) or have failed to satisfy the minimum standards of economic and financial standing and technical capacity required of suppliers by the contracting authority.

10(2)(b) 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 provided that 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.

10(2)(c) When the goods to be purchased or hired under the contract are to be manufactured purely for the purpose of research, experiment, study or development but not when the goods are to be purchased or hired to establish their commercial viability or to recover their research and development costs.

Note: EU guidance notes make it clear that this provision applies when the goods are manufactured for the purposes of research, in other words the manufacturing process itself represents the research activity. It does not cover capital goods purchased for research or experimental laboratories.

10(2)(d) When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the goods to be purchased or hired under the contract may only be manufactured or supplied by a particular person.

10(2)(e) When, 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 regulation 13 if the negotiated procedure is used pursuant to regulation 10(2)(a), cannot be met.

Note: EU guidance makes it clear that ‘the concept of unforeseeable events is taken to mean occurrences that overwhelmingly transcend the normal bounds of social and economic life’ (for example, an earthquake or flooding in the wake of which essential supplies are needed).

10(2)(f) When the goods to be purchased or hired under the contract are required by the contracting authority as a partial replacement for, or addition to, existing goods or an installation and when to obtain the goods from a person other than the person who supplied the existing goods or the installation would oblige the contracting authority to acquire goods having different technical characteristics which would result in –

- (1) incompatibility between the existing goods or the installation and the goods to be purchased or hired under the contract, or
- (2) disproportionate technical difficulties in the operation and maintenance of the original goods or the installation

and the terms of the proposed contract or the terms of that contract and of any other contract entered into for the same purpose, is not more than three years, unless there are reasons why it is unavoidable that this period should be exceeded.

Annex D2

Justifications for the use of the negotiated procedure – works contracts

Note that the regulations for supplies, works and services contracts number the provisions of regulation 10(2) differently in each case.

Regulation

- 10(2)(a) 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) Where contractors have been treated as ineligible on the grounds specified in regulation 14 (criteria for the rejection of contractors) or have failed to satisfy the minimum standards of economic and financial standing and technical capacity required of contractors by the contracting authority.
- 10(2)(b) When the work or works are to be carried out purely for the purpose of research, experiment or development but not when the works are to be carried out to establish commercial viability or to recover research and development costs.
- 10(2)(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.
- 10(2)(d) In the absence of tenders in response to an invitation to tender by the contracting authority using the open or restricted procedure, provided that the proposed terms of the contract are substantially unaltered from the proposed terms of contract in relation to which offers were sought using the open or restricted procedure.
- 10(2)(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 only be carried out by a particular person.

10(2)(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, 12 and 13 cannot be met.

Note: EU guidance makes it clear that 'the concept of unforeseeable events is taken to mean occurrences that overwhelmingly transcend the normal bounds of social and economic life' (for example, an earthquake or flooding in the wake of which essential supplies are needed).

10(2)(g) 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 the aggregate value of the consideration to be given under contracts for the additional works does not exceed 50 per cent of the value of the consideration payable under the original contract. 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.

10(2)(h) 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.

Annex D3

Justifications for the use of the negotiated procedure – services contracts

Note that the regulations for supplies, works and services contracts number the provisions of regulation 10(2) differently in each case.

Regulation

- 10(2)(a) In the event that the procedure leading to the award of a contract by the contracting authority using the open or restricted procedure was discontinued:
- (i) because of irregular tenders, or
 - (ii) where service providers have been treated as ineligible on the grounds specified in regulation 14 (criteria for rejection of service providers) or have failed to satisfy the minimum standards of economic and financial standing and technical capacity required of service providers by the contracting authority.
- 10(2)(b) Exceptionally, when the nature of the services to be provided, or the risks attaching thereto, are such as not to permit prior overall pricing.
- 10(2)(c) When the nature of the services to be provided, in particular in the case of intellectual services or services specified in category 6 of Part A of Schedule 1, is such that specifications cannot be drawn up with sufficient precision to permit the award of the contract using the open or restricted procedure.
- 10(2)(d) 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, provided that the proposed terms of the contract are substantially unaltered from the proposed terms of contract in relation to which offers were sought using the open or restricted procedure.
- 10(2)(e) When, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the services to be provided may only be provided by a particular person.
- 10(2)(f) 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.

10(2)(g) 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 for the open or restricted procedure, or the time limits specified in regulation 13 for the negotiated procedure when used pursuant to paragraph 10(2)(a) to 10(2)(c) above, cannot be met.

Note: EU guidance makes it clear that 'the concept of unforeseeable events is taken to mean occurrences that overwhelmingly transcend the normal bounds of social and economic life' (for example, an earthquake or flooding in the wake of which essential supplies are needed).

10(2)(h) When a contracting authority wants a person who has entered into a public services contract with the contracting authority to provide additional services which were not included in the project initially considered or in the original services contract but which through unforeseen circumstances have become necessary, and:

- (i) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great inconvenience to the contracting authority, or
- (ii) such services can be provided separately from the services provided under the original contract but are strictly necessary to the performance of that contract,

and the aggregate value of the consideration to be given under contracts for the additional services does not exceed 50 per cent of the value of the consideration payable under the original contract. 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.

10(2)(i) When a contracting authority wishes a person who has entered into a public services contract with it to provide new services which are a repetition of 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.