

May 2002/28

Core funding/operations

Request for data

Completed survey forms should be returned to the HEFCE by Friday 14 June 2002

This document requires all institutions to report the contracts they have awarded in the calendar year 2001, 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 2001

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Public supply, works and services contracts awarded in 2001

| | |
|--------------------------------------|--|
| To | Heads of HEFCE-funded higher education institutions English regional purchasing consortia |
| Of interest to those responsible for | Finance, Planning, Services |
| Reference | 2002/28 |
| Publication date | May 2002 |
| Enquiries to | Contacts listed in paragraph 9 |

Executive summary

Purpose

1. This document requires all institutions to report the contracts they have awarded in the calendar year 2001, 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 the HEFCE **by 14 June 2002**. 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 2001. 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:

- Tom Chadwick, Director of Procurement Development for the Joint Procurement Policy and Strategy Group (JPPSG), based in the University of Glasgow, tel 0141 330 6799
- Tim Russell, HEFCE Head of Procurement, tel 0117 931 7468
- Lesley Barr at the DfES in Sheffield, tel 0114 259 3226.

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 do so 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.

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 by **14 June 2002**. 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 |
| JPPSG | Joint Procurement Policy and Strategy Group |
| 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:
19. 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 (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 sub-paragraph 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:

(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 existing goods or the installation,

and the term 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 negotiated 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 under the contract purely for the purpose of research, experiment or development but not where 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 the 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.