

July 2005/30

Core funding/operations

Request for data

Completed survey forms should be returned to HEFCE by Friday 12 August 2005

This document requires all institutions to report the contracts they have awarded in the calendar year 2004, in accordance with the European Community's Directives on Public Procurement. We collect this information on behalf of the DfES. Returns must be made by e-mail. Where a nil return applies, institutions should still complete the forms.

Public supply, works and services contracts awarded in 2004

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Public supply, works and services contracts awarded in 2004

To	Heads of HEFCE-funded higher education institutions English regional purchasing consortia
Of interest to those responsible for	Finance, Planning, Services
Reference	2005/30
Publication date	July 2005
Enquiries to	Stephen Butcher, HEFCE Head of Procurement (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 2004, 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. There are two changes in the way returns must be made:
 - a. Returns must be submitted electronically.
 - b. Institutions must use a different coding system – the Common Procurement Vocabulary (CPV) – in order to be consistent with practice in other EU member states. The use of CPV codes in statistical returns will also be a requirement for contracts awarded under the Consolidated Procurement Directive, to be implemented by 31 January 2006.

Action required

5. Completed survey forms should be returned by e-mail to Ruth Carpenter at HEFCE (r.carpenter@hefce.ac.uk) by **Friday 12 August 2005**. Returns must be made on the Excel workbook, available on the web with this document at www.hefce.ac.uk under Publications. 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 Office of Government Commerce (OGC) 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 Union (OJEU). They must also provide information about expenditure on procurement.

8. The DfES has asked us to collect information for HEFCE-funded higher education institutions for the calendar year 2004. 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 Stephen Butcher, HEFCE Head of Procurement (tel 0117 931 7425, e-mail s.butcher@hefce.ac.uk).

10. 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

11. From this year the OGC requires returns to be submitted electronically. An Excel workbook is available on the web with this document at www.hefce.ac.uk under Publications. Institutions are required to complete Form A, and also Forms B and C if appropriate.

12. Also from this year, returns must use the Common Procurement Vocabulary (CPV) codification system, rather than the NACE, NIPRO, and Service Categories used hitherto. This is to be consistent with practice in other EU member states, and because the use of CPV codes in statistical returns will be a requirement for contracts awarded under the Consolidated Procurement Directive, to be implemented by 31 January 2006.

13. Institutions should not include contracts which have been placed through one of the five university regional purchasing consortia. Each consortium should make its own return.

14. The completed survey forms should be returned as an e-mail attachment to Ruth Carpenter at HEFCE (r.carpenter@hefce.ac.uk) by Friday 12 August 2005.

15. Where a nil return applies, institutions must still complete and return Form A with the relevant sections completed.

General requirements

16. Information is required in respect of each supply, work and Part A service (see Annex B) awarded in 2004. All institutions must provide a contact name, e-mail address and telephone number.

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

a. The thresholds for 2004 were:

Supplies	£153,376
Services	£153,376*
Works	£3,834,411

*A threshold of £129,462 applies to the following services for all authorities:

R & D Services (Category 8)

The following telecommunication services in Category 5

CPC 7524 – Television & Radio Broadcast Transmission
Services

CPC 7525 – Interconnection Services

CPC 7526 – Integrated telecommunication services

Subsidised services contracts under regulation 25 of the Public
Services Contracts Regulations 1993.

b. Contracting authorities are required to provide statistics for each contract at or above the relevant threshold awarded under the Regulations during 2004 (but see note l. below on aggregation).

c. Only contracts which were awarded during calendar year 2004 should be included in returns. Contracts for which the award procedure commenced in 2004 but for which the contract was not awarded until 2005 should not be included.

d. Actual or estimated contract values, exclusive of VAT, should be given, Please do not include annual figures. If a contract was awarded in a previous year it need not be reported.

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 procurement agencies. 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 consideration which is expected to be paid should be used.

h. Framework agreements awarded in accordance with the rules should be included. 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 from centrally arranged frameworks, which 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 should 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.eu.int/>. Where a number of codes were used to describe a single item then the most appropriate code should be used. In such cases the use of a high level code might be more relevant, for example, 15321000-4 Fruit Juices rather than 15321108-8 Concentrated Orange Juice. Where a number of different awards were made as a result of a single contract notice then each award should have its own entry with its relevant CPV code.

k. Contracting authorities should indicate whether contracts advertised in the Official Journal (OJ) were awarded under the open, restricted or negotiated procedure. For contracts awarded under the negotiated procedure, **whether advertised in the OJ 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.

I. Contracts which are below the threshold should be included in the detailed returns where they have been advertised because they are part of a series of contracts for goods of the same type which, in aggregate, exceed the threshold, or which were otherwise awarded in accordance with the Regulations as a consequence of the aggregation rules.

List of abbreviations

CPC	Central Products Classification
CPV	Common Procurement Vocabulary
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
OGC	Office of Government Commerce
OJEU	Official Journal of the European Union

Justifications for use of the negotiated procedure

Supplies contracts

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;
- 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;

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.

Contracting authorities should indicate in their return the justification for non-advertisement of a contract by reference to the appropriate letter in brackets (a-f) which reflect the relevant regulations.

Justifications for use of the negotiated procedure

Works contracts

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; or

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 -

(1) 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 convenience to the contracting authority, or

(2) 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 awarding the contract for the purposes 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.

Contracting authorities should indicate in their return the justification for non-advertisement of a contract by reference to the appropriate letter in brackets (a-h) which reflect the relevant regulations.

Justifications for use of the negotiated procedure

Service contracts

Regulations

- 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 the 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, 12 for the open or restricted or regulation 13 for the negotiated procedure when used pursuant to regulations 10(2)(a) to (c) cannot be met; or

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-

(1) such services cannot for technical or economic reasons be provided separately from the services provided under the original contract without great convenience to the contracting authority, or

(2) such services can be carried out 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 awarding the contract for the purposes of carrying out the contract.

10(2)(l) 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.

Contracting authorities should indicate in their return the justification for non-advertisement of a contract by reference to the appropriate letter in brackets (a-l) which reflect the relevant regulations.

Annex B

Categories of service: part A

Category	Services
1.	Maintenance and repair of equipment, including vehicles, ships and aircraft
2.	Transport by land, including armoured car services and courier services but not including transport of mail and transport by rail
3.	Transport, by air but not transport of mail
4.	Transport of mail by land, other than by rail, and by air
5.	Telecommunications services other than voice telephony, telex, radiotelephony, paging and satellite services
6.	Financial services (a) Insurance services (b) Banking & investment services other than financial services in connection with the issue, sale, purchase or transfer of securities or other financial instrument, and central bank services.
7.	Computer and related services
8.	R&D services where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs and the services are to be wholly paid for by the contracting authority
9.	Accounting, auditing and bookkeeping services
10.	Market research and public opinion polling services
11.	Management consultancy services and related services, but not arbitration and conciliation services
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
13.	Advertising services
14.	Building-cleaning services and property management services
15.	Publishing and printing services on a fee or contract basis
16.	Sewerage and refuse disposal services: sanitation and similar services

Annex C

Guidance on completing Form B

Nationality Must be the nationality of the supplier etc – NOT the product. See below for commonly used nationality codes.

Supply Insert one for each contract as appropriate
Work For service contracts information is required for Categories 1–16
Service only (see Annex B)

Code Full CPV code to be used
Take from OJEU contract notice/award notice, or

http://simap.eu.int/nome_cod_cpv_current_2003_en.html

Open Insert one for each contract as appropriate
Restricted
Negotiated

Negotiated See Annex A1, A2 and A3. Insert letter (a – l) as appropriate here.
justification

Total contract Please put actual or estimated total value. Do NOT put in £x per
value annum.

Common nationality codes

Belgium	BE
France	FR
Germany	DE
Ireland	IE
Italy	IT
Japan	JP
Netherlands	NL
Spain	ES
United Kingdom	UK
United States	US

A full list can be obtained here:

http://simap.eu.int/nome_other_countr/countries_en_html