

Procurement Policy

Action Note 01/07 - 18 June 2007

EU statistics on public procurement - annual return for calendar year 2006

Issue

Request for annual statistical returns on public procurement contracts awarded in calendar year 2006.

Dissemination

2. This action note and accompanying spreadsheet should be forwarded to those with responsibility for undertaking the annual exercise. Further details on the collection arrangements are given in paragraph 9 below.

Contact

3. Enquiries about this paper should be addressed to Marilyn Robertson – 01603 704586 - marilyn.robertson@ogc.gsi.gov.uk or to OGC Service Desk 0845 000 4999 servicedesk@ogc.gsi.gov.uk

Timing

4. Annual returns should be returned to OGC by 31 July 2007.

Background

5. This year returns will need to incorporate a few changes brought into effect by the Public Contracts Regulations 2006. The provision relating to the statistics exercise can be found in regulation 40:
 - http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf.
6. The main changes are to reflect the use of the Competitive Dialogue procedure and to indicate in the return when a framework agreement has been awarded. We do not require information on contracts “called-off” from framework agreements as it is information about the framework agreement itself that is required.

7. Information is required for **each** contract or framework agreement awarded during calendar year 2006 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.**
8. Those entities that appear in Schedule 1 of the Public Contracts Regulations or their successor bodies (i.e. new bodies now undertaking a function previously done by an Schedule 1 entity) are also required to provide the overall value of contracts below the threshold of each of the Regulations. A list of these entities is attached at Annex 1 of this PPN.

Detail

Arrangements for the submission of data

9. Separate Returns (including nil-returns) are required for each contracting authority, including Non-Departmental Public Bodies (NDPBs), Local Authorities, NHS bodies, relevant education bodies and Registered Social Landlords / Housing Associations. Returns in respect of Executive Agencies should be combined with those of the parent department unless an Agency appears as a separate entity in Annex 1 of this PPN. Similarly, returns from discrete operational units or individual purchasing units within a contracting authority should be incorporated into the main return and not separately identified.
10. For supply contracts, the Ministry of Defence should submit separate returns for those subject to the World Trade Organisation Government Procurement Agreement (GPA) and those that are subject to the EU rules only.
11. Government departments should send returns to OGC. **Contracting authorities that are not Government departments are required under the Regulations to submit their returns to the relevant parent body, for onward transmission to the OGC.** The requirement on such contracting authorities is enforceable through the courts. The responsible departments are not required to aggregate the individual returns from the bodies for which they are responsible. They are, however, expected to ensure that the returns from those bodies are complete, credible and submitted on time.
12. Departments are requested to bring the contents of this paper to the attention of all contracting authorities for which they are responsible. The following entities are considered to be the responsibility of the administration or department shown alongside their title: -

Entity	Responsible Body
Authorities subject to the legislative competence of the Scottish Parliament	The Scottish Procurement Directorate
Authorities subject to the legislative competence of the National Assembly for Wales	The National Assembly for Wales
Authorities subject to the legislative competence of the Northern Ireland Assembly	Department of Finance & Personnel Central Procurement Directorate
BBC	Department of Culture Media and Sport

Entity	Responsible Body
Post Office (postal business)	Department for Trade and Industry
Universities and further education establishments	Department for Education and Skills

13. Departments are requested to ensure that returns are sent by e-mail to OGC as soon as possible and not later than 31 July 2007. **Nil returns are required.** They should be e-mailed to: eustatistics@ogc.gsi.gov.uk. It would help OGC if the filename of the spreadsheet could identify the authority in some way. Any enquiries can be sent to the same email address.
14. Where a department is responsible for obtaining returns from a number of bodies, it will facilitate the process if the returns are forwarded to OGC individually rather than waiting for a complete set.

Contacts in departments

15. A list of departmental and other contacts responsible for the submission of statistics is attached at Annex 4. Amendments or additions to the list would be appreciated. They should be notified to the above email address.

Policy and Standards Division

Office of Government Commerce

**BODIES COVERED BY SCHEDULE 1 TO THE PUBLIC SUPPLY CONTRACTS
REGULATIONS (updated to reflect known changes)**

Cabinet Office

Office of the Parliamentary Counsel
National School of Government

Central Office of Information

Charity Commission

Crown Estate Commissioners (Vote Expenditure Only)

Crown Prosecution Service

Department for Communities and Local Government

Rent Assessment Panels

Department for Constitutional Affairs

Boundary Commission for England

Circuit Offices and Crown, County and Combined Courts (England and
Wales)

Combined Tax Tribunal

Council on Tribunals

Court of Appeal Criminal

Immigration Appellate Authorities

Immigration Adjudicators

Immigration Appeals Tribunal

Lands Tribunal

Law Commission

Legal Aid Fund (England and Wales)

Office of the Social Security Commissioners

Pensions Appeal Tribunals

Public Trust Office

Supreme Court Group (England and Wales)

Transport Tribunal

Department for Culture, Media and Sport

British Library

British Museum

Commission for Architecture and the Built Environment

The Gambling Commission

Historic Buildings and Monuments Commission for England (English
Heritage)

Imperial War Museum

Museums, Libraries and Archives Council

National Gallery

National Maritime Museum

National Portrait Gallery

National History Museum

Science Museum

Tate Gallery

Victoria and Albert Museum

Wallace Collection

Department for Education and Skills

Higher Education Funding Council for England

Department for Environment, Food and Rural Affairs

Agricultural Dwelling House Advisory Committees
Agricultural Land Tribunals
Agricultural Wages Board and Committees
Cattle Breeding Centre
Countryside Agency
Plant Variety Rights Office
Royal Botanic Gardens, Kew
Royal Commission on Environmental Pollution

Department of Health

Dental Practice Board
National Health Service Strategic Health Authorities
NHS Trusts
Prescription Pricing Authority

Department for International Development**Department of the Procurator General and Treasury Solicitor**

Legal Secretariat to the Law Officers

Department of Trade and Industry

Central Transport Consultative Committees
Competition Commission
Electricity Committees
Employment Appeal Tribunal
Employment Tribunals
Gas Consumers' Council
National Weights and Measures Laboratory
Office of Manpower Economics
Patent Office

Department for Transport

Maritime and Coastguard Agency

Department for Work and Pensions

Disability Living Allowance Advisory Board
Independent Tribunal Service
Medical Boards and Examining Medical Officers (War Pensions)
Occupational Pensions Regulatory Authority
Regional Medical Service
Social Security Advisory Committee

Export Credits Guarantee Department**Foreign and Commonwealth Office**

Wilton Park Conference Centre

Government Actuary's Department**Government Communications Headquarters****Home Office**

HM Inspectors of Constabulary
Parole Board and Local Review Committees

House of Commons**House of Lords****Ministry of Defence**¹

Meteorological Office
Defence Procurement Agency

The National Archives**National Assembly for Wales**

¹ Only in respect of public supply contracts for the purchase or hire of non-warlike materials specified in Schedule 2

Higher Education Funding Council for Wales
Local Government Boundary Commission for Wales
Royal Commission for Ancient and Historical Monuments in Wales
Valuation Tribunals (Wales)
Welsh National Health Service Authorities and Trusts
Welsh Rent Assessment Panels

National Audit Office

National Savings and Investments

Northern Ireland Assembly Commission

Northern Ireland Court Service

Coroners Courts
County Courts
Court of Appeal and High Court of Justice in Northern Ireland
Crown Court
Enforcement of Judgements Office
Legal Aid Fund
Magistrates' Courts
Pensions Appeals Tribunals

Northern Ireland, Department for Employment and Learning

Northern Ireland, Department for Regional Development

Northern Ireland, Department for Social Development

Northern Ireland, Department of Agriculture and Rural Development

Northern Ireland, Department of Culture, Arts and Leisure

Northern Ireland, Department of Education

Northern Ireland, Department of Enterprise, Trade and Investment

Northern Ireland, Department of the Environment

Northern Ireland, Department of Finance and Personnel

Northern Ireland, Department of Health, Social Services and Public Safety

Northern Ireland, Office of the First Minister and Deputy First Minister

Northern Ireland Office

Crown Solicitor's Office
Department of the Director of Public Prosecutions for Northern Ireland
Forensic Science Laboratory of Northern Ireland
Office of the Chief Electoral Officer for Northern Ireland
Police Service of Northern Ireland
Probation Board for Northern Ireland
State Pathologist Service

Office of Fair Trading

Office for National Statistics

National Health Service Central Register

Office of the Parliamentary Commissioner for Administration and Health

Service Commissioners

Paymaster General's Office

Postal Business of the Post Office

Privy Council Office

Public Record Office

HM Revenue and Customs

The Revenue and Customs Prosecutions Office

Royal Hospital, Chelsea

Royal Mint

Rural Payments Agency

Scotland, Auditor-General

Scotland, Crown Office and Procurator Fiscal Service

Scotland, General Register Office

Scotland, Queen's and Lord Treasurer's Remembrancer

Scotland, Registers of Scotland

The Scotland Office

The Scottish Ministers

Architecture and Design Scotland

Crofters Commission

Deer Commission for Scotland

Lands Tribunal for Scotland

National Galleries of Scotland

National Library of Scotland

National Museums of Scotland

Royal Botanic Garden Edinburgh

Royal Commission on the Ancient and Historical Monuments of Scotland

Scottish Further and Higher Education Funding Council

Scottish Law Commission

Local Health Councils

The NHS Education for Scotland Board

Scottish Council for Postgraduate Medical and Dental Education

Scottish National Health Service Authorities and Trusts

The Office of the Accountant of Court

High Court of Justiciary

Court of Session

HM Inspectorate of Constabulary

Parole Board for Scotland and Local Review Committees

Pensions Appeal Tribunals

Scottish Land Court

Sheriff Courts

Scottish Criminal Record Office

Scottish Crime Squad

Scottish Fire Service Training Squad

Scottish Police College

Office of the Social Security Commissioners

Rent Assessment Panel and Committees

The Scottish Parliamentary Body Corporate

Scottish Record Office

HM Treasury

Office of Government Commerce

United Kingdom Debt Management Office

The Wales Office (Office of the Secretary of State for Wales)

EC PUBLIC PROCUREMENT: STATISTICS FOR 2006

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 (see Annex 3) awarded in 2006. All authorities must provide a contact name, e-mail address and telephone number.

2. In obtaining and preparing returns, departments should note the following general points:
 - a. The thresholds for 2006 (revised regulations) were:

	Schedule 1 bodies (See Annex 1)	Others
Supplies	£93,738	£144,371
Services	£93,738*	£144,371
Works	£3,611,319	£3,611,319

*A threshold of £144,371 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 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 2006 (but see note I. below on aggregation). Contracting authorities which are included in Schedule 1 to the Public Contracts Regulations (or their successors) are also required to report the estimated total value of their below threshold contracts.

- c. Only contracts which were awarded during calendar year 2006 should be included in returns. Contracts for which the award procedure commenced in 2006 but for which the contract was not awarded until 2007 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, 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.
- 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. 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 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/>. Where a number of codes were used to describe a single or similar items then the single 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 each award should have its own entry with its relevant CPV code.

- k. Contracting Authorities should indicate whether contracts advertised in the Official Journal (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 Appendix 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.

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.

A

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) 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 discontinued 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 (services only)

(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.

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—

E

(a) in the case of a public contract—

(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));

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;

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;

H

(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—

(aa) regulation 15 for the open procedure;

(bb) regulation 16 for the restricted procedure; or

(cc) regulation 17 for the negotiated procedure;

cannot be met;

I (supplies only)

(b) in the case of a public supply contract—

(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)

(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—

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

(bb) disproportionate technical difficulties in the operation and maintenance of the existing goods or the installation;

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)

(d) in the case of a public works contract or a public services contract—

(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—

(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

(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

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.

PART A (PRIORITY) SERVICE CATEGORIES

Category	Services
	PART A
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.
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

A more detailed listing, including appropriate CPV codes is included in Schedule 3 of the Regulations - http://www.opsi.gov.uk/si/si2006/uksi_20060005_en.pdf.

Departmental Contacts

Annex 4

Cabinet Office	Chris Redford
COI	Bob Ager
Charity Commission	David Reynolds
Crown Estates	Alwyn Thomas
Crown Prosecution Service	James Carter
DCA	Kathie Teahan
DCLG	Ben Ankrah & Gary Mankelow
DCMS	Noel Miller
DEFRA	Mabel Bent & Joy Patel
DfES	Lisa Wray
DfID	Ann Shaw
DfT	Deborah Morgan
Department of Health	Jane Mortimer
DH (NHS Returns)	Rachel Nicholson
DTI	Andy Timms
DWP	Neil Booth
ECGD	Jacqueline Bennett
FCO	Ken Price
Government Actuaries Dept	Mark Cooper
Home Office	David Williams
House of Commons	Angela Gladwin
House of Lords	Don Bowman
HM Land Registry	Gill Copple
HM Revenue & Customs	Mark Smith
MoD	Trevor Best
National Assembly for Wales	Samantha Perkins
National Audit Office	Emma Gallagher
National Savings	Chris Wood
Northern Ireland Depts	Deirdre Mussen
Northern Ireland Office	Aislinn Gray
Office for National Statistics	Sandra Clarke
OFT	Piotr Ponitka
Ordnance Survey	Gary Miller
Patent Office	Neil Regan
Post Office	Rosemary Buck
Privy Council Office	Ceri King
National Archive	Sandy Flatman
Royal Mint	Trevor Pritchard
RPA	Ruth Dalfsen
Scottish Executive	Gary Crombie
OGC buying.solutions	Jeff Cushion
H M Treasury	Colin Collins
Treasury Solicitors Dept	Robert Gregory