

## GUIDANCE NOTES FOR EU STATISTICS ON UTILITIES SECTOR PROCUREMENT: ANNUAL RETURN FOR CALENDAR YEAR 2004

### General requirements

1. As explained in the covering note of 7 October 2005, the 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 (refer to Annex 3) awarded in 2004. All entities must provide a contact name, e-mail address and telephone number.
2. In obtaining and preparing returns, entities should take note of the following general points:
  - a. The thresholds for 2004 were:

#### Supplies and Services

Water, Electricity, Urban Transport <sup>1</sup> Airports and Ports	£306,753 <sup>2</sup>
Oil, Gas Coal and Railway	£258,923
Telecoms Sector	£388,385

#### Works

Water, Electricity, Urban Transport <sup>1</sup> Airports and Ports	£3,834,411
Oil, Gas Coal and Railway	£3,236,542
Telecoms Sector	£3,236,542

<sup>1</sup> includes Urban Railway, Tramway, Trolleybus or Bus services

<sup>2</sup> except Part B (Residual services), R & D services and certain telecom services (CPC 7524,7525 & 7526) where the threshold is £247,479

#### Below threshold

- b. All entities are required to report the total value, estimated if necessary, of the works, supplies and part A service contracts awarded by it in the previous calendar year for each relevant area of activity, but which were excluded from the Regulations because their estimated value was less than the threshold.

#### Above threshold

- c. Entities operating in the following fields of activity:

- the production, transport or distribution of drinking water, hydraulic engineering, irrigation, land drainage or the disposal or treatment of sewage;
- the production, transport or distribution of electricity;
- urban railway, tramway, trolleybus or bus services;
- the provision of airport facilities;
- the provision of maritime or inland port or other terminal facilities;

are required to provide statistics for each contract equal to or above the relevant threshold awarded under the Regulations during 2004 (but see note k. below on aggregation).

- d. 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.
- e. Full estimated contract values should be given, VAT exclusive.
- f. Entities should include contracts that they have themselves awarded. This includes procurements for which another entity or body has acted as an agent. 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.
- g. A number of entities may have formed consortia to act as central procurement agencies. Such consortia may need to submit a return, either under their own name or one of the members of the consortium.
- h. 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, contains a variation of price formula or provides the utility with an option to extend - the best estimate of the consideration which is expected to be paid should be used.
- i. Frameworks awarded in accordance with the rules following a call for competition in the Official Journal should be included. The value shown should be the estimated value of anticipated call-offs under the arrangement or the maximum possible value of call-offs. Where more than one framework has been awarded in response to a single requirement, entities should estimate the likely value of call-offs across those frameworks. Entities 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 will report the information.
- 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. 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.
- l. Entities should indicate whether contracts advertised in the Official Journal were awarded under the open, restricted or negotiated procedure. For contracts awarded under the negotiated procedure and where one of the derogations from the need to publicise the call for competition have been applied the appropriate justification should be given. The text of the possible justifications set out in the Regulations is reproduced at Appendix A (below).
- m. 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.

**JUSTIFICATIONS FOR AWARD OF CONTRACT WITHOUT A CALL FOR COMPETITION -  
REGULATION 16 OF THE UTILITIES CONTRACTS REGULATIONS 1996 (1996 No. 2911)**Regulation

- 16(1)(a) in the absence of tenders or suitable tenders in response to a procedure with a call for competition but only if the original terms of the proposed contract have not been substantially altered;
- 16(1)(b) when the contract is to be awarded purely for the purposes of research, experiment, study or development but not where it has the purpose of ensuring profit or of recovering research and development costs and insofar as its award will not prejudice the competitive award of subsequent contracts which are, in particular, for the same purpose;
- 16(1)(c) when, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract may only be performed by a particular person;
- 16(1)(d) when (but only if it is strictly necessary) for reasons of extreme urgency brought about by events unforeseeable by the utility the time limits specified in regulations 17(1) to (4) cannot be met;
- 16(1)(e) when the contract to be awarded is a supply contract and the goods to be purchased or hired under the contract are required by the utility 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 utility 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 original goods or the installation
- 16(1)(f) when the contract to be awarded is a works or services contract and the utility wants a person who has entered into a works or services contract with the utility to carry out additional works or provide additional services were not included in the project initially considered or in the original work or services contract but which through unforeseen circumstances have become necessary and-
- (i) such works or services cannot for technical or economic reasons be carried out or provided separately from those under the original contract without great convenience to the utility, or
  - (ii) such works or services 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;

- 16(1)(g) subject to paragraph (2) below when the contract to be awarded is a works contract and the utility wishes a person who has entered into a works contract with it following a call for competition which satisfies the requirement of regulation 15(1) 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.
- 16(1)(h) in respect of a contract for the purchase or hire of goods quoted and purchased on a commodity market
- 16(1)(i)\* when the contract to be awarded is to be awarded under a framework agreement which has been awarded in accordance with these Regulations and to which the provisions of regulation 11 apply
- 16(1)(j) when the contract to be awarded is a supply contract, to take advantage of a particularly advantageous bargain available for a very short time at a price considerably lower than normal market prices
- 16(1)(k) when the contract to be awarded is a supply contract, to take advantage of particularly advantageous conditions for the purchase of goods in a closing down sale or in a sale brought about by insolvency; and
- 16(1)(l)\* in the case of service contracts, 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;

\* There is no requirement for statistics in respect of these derogations