

PROCUREMENT LEGISLATION AND THE NRA

A brief guide



NRA

National Rivers Authority





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A BRIEF GUIDE

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A BRIEF INTRODUCTION

The Authority is covered by a number of new Procurement Regulations. They bring legislative requirements into force in the UK which have been agreed as EC Directives as part of the Single Market programme.

These regulations open up public procurement to European competition and will affect the way in which we purchase goods and services.

We currently spend around £300 million on supplies, works and services and place 130,000 orders and contracts each year. The new legislation will affect directly a significant proportion of this spending.

The legislation is intended to encourage competition by laying down detailed advertising and tendering procedures for purchasers. We will also be required, wherever possible, to use European Standards.

We are taking a common-sense approach to the legislation. We need to protect the Authority from the severe financial penalties of non-compliance, but we do not want to create a new bureaucracy. Our policy is to implement the rules and obtain the benefits, but with the minimum cost and disruption to our operations.

This booklet gives you a brief introduction to the procurement legislation and the impact that it will have on the Authority. A detailed Compliance Policy Manual has been distributed to key staff and training events have been held. Contact points for advice are also included.

I am confident that we can meet successfully the challenge of the EC procurement legislation and take advantage of the opportunities that it brings, to achieve value for money for the Authority through effective buying in Europe.



ED GALLAGHER
Chief Executive

WHAT IS PROCUREMENT LEGISLATION?

Public procurement legislation now covers all parts of Central and Local Government, other Public Bodies and the Utilities operating in the water, energy, transport and telecommunications sectors.

As a public body, NRA are subject to the public sector legislation unlike the water companies who are subject to the separate provisions of the utilities regulations.

Three Regulations for Supply Contracts, Works Contracts and Services Contracts affect the NRA. Those dealing with services contracts are effective from 1 July 1993. The table below gives a brief guide.

Legislation	Area of Coverage	Threshold	Status
Public Supplies	Goods including products and crops. An example might be computer hardware which would be a supply and would include siting and installation.	£141,000	In force
Public Works	Items listed in schedule 3 of the Regulations limited to building and civil engineering. An example might be excavation work where the objective is principally works.	£3.53 million	In force
Public Services	All other contracts excluding land and contracts of employment which are specifically exempt from the Legislation.	£141,000	In force from 1 July 1993

IS THE CONTRACT COVERED?

The rules allow certain contracts to be excluded, these include:-

- Contracts for areas covered by the Utilities Regulations. For example supplies of gas or water.
- Contracts classified as secret by the member State or contracts which are awarded as part of an international agreement.

Contracts are only covered if they exceed the financial thresholds. However, the legislation requires us to aggregate the value of contracts having similar characteristics which are awarded to meet recurrent needs over the same period. Consequently many more contracts will be covered than first appears to be the case. The legislation specifically forbids splitting up contracts or using special evaluation methods to keep the values beneath the thresholds.

The Regulations allow us to aggregate the value of contracts independently at each of our Regions provided they are each designated as independent purchasing bodies. Where these conditions are not met we must aggregate the value of our contracts at national level.

PUBLISHING NOTICES

The regulations require us to advertise (or publish) our contracts in the Official Journal of the European Community (OJEC).

There are three kinds of notice:

- prior information notice
- call for competition
- contract award notice

Prior Information Notice

This notice is published to give the market an indication of an anticipated spend in product areas. Works contracts must be indicated separately within the notice which must be placed as soon as the demand is known.

Call for Competition

This notice lets the market know that a specific demand is envisaged. The call for competition must provide specific details and may lay down minimum conditions for applicants to meet in terms of financial standing and technical capacity.

Contract Award Notice

There are two parts to the contract award notice. The first part is for publication in OJEC whilst the second part provides information for the European Commission. All notices must be published in the form and within the timescales indicated in the Legislation.

SELECTING TENDERERS AND AWARD PROCEDURES

It is a requirement of the legislation that we choose enough tenderers to ensure adequate competition. This is defined in the Works Regulations and Services Directive as being a minimum of 5 candidates and a maximum of 20. These provisions will be extended to the supplies area shortly.

The methods by which tenderers are selected must be objective and fair. The Regulations give companies who are not selected the right to know the reasons for non-selection. These reasons must be carefully recorded by the NRA and retained for four years. Companies may only be refused the opportunity to tender for the reasons set out in the Regulations.

Under the Regulations, there are three permitted award procedures:

- **Open Procedure;** where a notice is placed in the Official Journal inviting applications which meet minimum criteria, all of those who meet these criteria must be sent an invitation to tender.
- **Restricted Procedure;** where we may reduce the number of applicants selected to tender according to the procedures set out in the Regulations.
- **Negotiated Procedure;** whereby we can use one or more applicants and negotiate with them. We can use a tender or negotiate. In certain instances, the negotiated procedure is available without publishing a call for competition.

Use of the restricted procedure is controlled and use of the negotiated procedure is only available in very strictly defined instances.

TECHNICAL SPECIFICATIONS AND STANDARDS

The Regulations do not simply control the way we buy, but also the things we buy. Under the rules we are obliged to use European specifications where these exist. A European specification is defined as:

- a national standard (such as BS) incorporating a European Standard.
- a common technical specification, an example being those Directives dealing with such areas as Simple Pressure Vessels and Electromagnetic Compatibility.
- items subject to the Construction Products Directive.

Where there are very clear reasons, we may use an exemption although this must be justified in each case and formal records maintained. Exemptions may only be for reasons of incompatibility or because of technological advance since the standard was created.

Where there is not a European specification we must use one of the following standards in descending order:

- a British standard incorporating an international standard
- any British standard
- any other standard
- we may use a non-discriminatory company or industry specification.

ASSESSING TENDERS

We have a choice between two methods of assessing offers:

- lowest price
- most economically advantageous bid.

Where we make use of the second type we must be prepared to:

- lay down the criteria we intend to use
- publish these criteria in the contract notice when the contract documents are issued and where possible the criteria should be detailed in descending order of importance.

Where an in-house supplier bids in competition with external companies we must treat all bids equally.

KEEPING RECORDS

We must keep records at each stage of the procurement process in case of challenge in the Courts or for inspection by the European Commission. These records must detail all decisions made by the NRA in individual contract awards and must be kept for a minimum of four years.

In particular we must keep records of each occasion the NRA undertakes one or more of the following activities:

- the use of the restricted and negotiated procedure
- the use of the negotiated procedure without a call for competition
- technical exclusions used
- discussions relating to choice of tenderers
- assessment of tenders
- dates and copies of notices sent to the Official Journal.

WHAT IF A SUPPLIER COMPLAINS?

Suppliers have a number of remedies available to them if we breach the rules. These include:

- suspension of the contract award procedure
- setting aside of unlawful decisions taken
- correction of documents to remove discriminatory clauses
- damages, including costs of tendering and, in certain cases, loss of profits.

These remedies can be granted by national courts but the supplier must be able to demonstrate:

- that we have breached the Regulations
- that they suffered or risked suffering, loss or damage.

A supplier must also take action within three months of the breach becoming known to him and must advise us before seeking redress in the courts.

INFORMATION AND HELPLINES

Training events have been held for both Senior Managers and Procurement Practitioners to provide the necessary level of awareness and understanding of the Regulations.

Copies of the NRA Compliance Manual are held by Regional Procurement Officers.

It is extremely important that the NRA demonstrate consistency in all matters relating to EC Procurement legislation.

All communication with the European Journal (OJEC) shall be made through a designated Centre of Expertise. This will include all publications of notices and the provision of advice relating to matters such as aggregation etc.

Points of Contact:-

1. Regional Procurement Officer/Head Office Procurement Officer.
2. Centre of Expertise (EC Procurement)

Simon Butt - Regional Procurement Officer, South West/Wessex

Tel. 7 24 2466

This booklet is produced for the use of NRA staff and should not be made available to external organisations.