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UK Public Procurement Law Digest: New Threshold Values for 2012 & 2013

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From 1 January 2012, the threshold values that trigger the need for a regulated public procurement exercise in the UK and across Europe have been increased.

WHAT IS THE DEVELOPMENT?

Commission Regulation (EC) No. 1251/2011 of 30 November 2011 (the “**Regulation**”) amends the existing European directives that set out the EU public procurement rules and will come into force on 1 January 2012. Utilities-related procurement (governed by Directive 2004/17/EC of 31 March 2004) as well as non-utilities-related procurement (governed by Directive 2004/18/EC of 13 July 2009) will be affected by the change.

WHY IS THIS DEVELOPMENT IMPORTANT?

Under the EU public procurement rules, all requirements leading to a contract awarded by a public or government body – including utilities – must follow openly advertised tendering and contract award procedures, and comply with principles of transparency, fairness and equality. A number of exceptions exist, among which is that the rules only apply to requirements above a certain financial threshold: *i.e.*, small contracts are not required to follow the same rules.

The European Commission updates the Europe-wide threshold values every two years in order to make sure that they are consistent with the thresholds under the World Trade Organisation’s Government Procurement Agreement. On this biennial review, the thresholds have been increased – although not by much.

The Regulation has a direct effect in all EU Member States, and all EU Member States will have to apply the new threshold values to their national procurement rules.

The Regulation prescribes the new threshold values in terms of Euros, and a separate communication from the European Commission sets how these new values should be translated into local currencies in EU Member States (such as the UK) that have not converted to Euros.

In the UK, the new threshold values that apply from 1 January 2012 are as follows:

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Non-Utilities Procurement

For contracting authorities and other regulated bodies whose activities do not fall within the utilities sector (e.g., central government departments/agencies, local authorities, etc.), the new threshold (exclusive of VAT) will, generally speaking, be:

- £113,057 (or €130,000) for supply and services contracts, as well as design contests, to be awarded by central government departments and agencies *excluding* the following contracts:
 - contracts for the provision of research and development services;¹
 - contracts for certain telecommunication services;² and
 - contracts for the provision of so-called 'Part B' services,³

in respect of which the applicable threshold will be £173,934 (or €200,000);

- £173,934 (or €200,000) for supply and services contracts, as well as design contests, to be awarded by contracting authorities other than central government departments and agencies (e.g., local authorities);⁴ and
- £4,348,350 (or €5,000,000) for works contracts to be awarded by any contracting authority.

In respect of subsidised contracts, the threshold will become:

- £4,348,350 (or €5,000,000) for contracts for major civil engineering projects and the construction of hospitals, schools, universities and other public buildings, where the works are subsidised directly by contracting authorities by more than 50%; and
- £173,934 (or €200,000) for services contracts that are subsidised directly by contracting authorities by more than 50% (to the extent such services contracts relate to contracts for major civil engineering projects or the construction of hospitals, schools, universities and other public buildings that are also directly subsidised by contracting authorities by more than 50%).

Where a contracting authority enters into multiple contracts to cover a single requirement, the Euro-value of threshold applicable to each lot is unaffected by the Regulation and will remain at:

- £69,574 (or €80,000) for each lot of a supply and services contract; and
- £869,670 (or €1,000,000) for each lot of a works contract.

Note that separate thresholds continue to apply to procurement of goods and services by the Ministry of Defence, as well as planned procurements to be included in prior information notices.

¹ These are services that fall within Category 8 of 'Part A' services listed in Schedule 3 to the Public Contracts Regulations 2006 (which reflects Annex II A of Directive 2004/18/EC).

² These are services that fall within Category 5 of 'Part A' services listed in Schedule 3 to the Public Contracts Regulations 2006 and have CPV codes that are the equivalent of CPC references 7524, 7525, and 7526.

³ These are services that fall within 'Part B' services listed in Schedule 3 to the Public Contracts Regulations 2006 (which reflects Annex II B of Directive 2004/18/EC).

⁴ These are entities *not* listed in Schedule 1 to the Public Contracts Regulations 2006 (which reflects Annex IV to Directive 2004/18/EC).

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Utilities Procurement

For contracting authorities and other regulated bodies that pursue activities in the utilities sector (e.g., operators of gas/electricity distribution networks, operators of public transport services, etc.), the new threshold (exclusive of VAT) will, generally speaking, be:

- £347,868 (or €400,000) in respect of supply and services contracts as well as design contests organised as part of procurement for services; and
- £4,348,350 (or €5,000,000) in respect of works contracts.

Where multiple contracts are awarded to cover a single requirement, the Euro-value of threshold applicable to each lot is unaffected by the Regulation and will remain at:

- £69,574 (or €80,000) for each lot of a supply and services contract; and
- £869,670 (or €1,000,000) for each lot of a works contract.

Note that separate thresholds will continue to apply to planned procurements to be included in periodic indicative notices.

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