

# Client Alert

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## European Procurement and Government Contracts Digest: New Threshold Values for 2014 & 2015

By Alistair Maughan

### New Higher Procurement Threshold Values to Apply Across Europe from 1 January 2014

From 1 January 2014, the threshold values that trigger the need for a regulated public procurement exercise across Europe have been increased. However, because of the movement in the £/€ exchange rate in the past two years, the equivalent values in pounds sterling for UK-originated procurements have fallen.

#### WHAT IS THE DEVELOPMENT?

Commission Regulation (EC) No. 1336/2013 of 13 December 2013 (the “**Regulation**”) amends the existing European directives that set out the EU public procurement rules and will come into force on 1 January 2014. 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. During the latest 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 out how these new values should be translated into local currencies in EU Member States (such as the UK) that have not converted to Euros. The pound sterling values are slightly lower than the last issued threshold values, published two years ago.

The new threshold values that apply from 1 January 2014 are set out below.

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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 and local authorities), the new threshold (exclusive of VAT) will, generally speaking, be:

- €134,000 (or £111,676) 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;<sup>1</sup>
  - contracts for certain telecommunication services;<sup>2</sup> and
  - contracts for the provision of so-called 'Part B' services;<sup>3</sup>in respect of which the applicable threshold will be €207,000 (or £172,514);
- €207,000 (or £172,514) 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);<sup>4</sup> and
- €5,186,000 (or £4,322,012) for works contracts to be awarded by any contracting authority.

In respect of subsidised contracts, the threshold will become:

- €5,186,000 (or £4,322,012) 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
- €207,000 (or £172,514) 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 the threshold applicable to each lot is unaffected by the Regulation and will remain at:

- €80,000 (or £66,672) for each lot of a supply and services contract; and
- €1,000,000 (or £833,400) for each lot of a works contract.

<sup>1</sup> 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).

<sup>2</sup> 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.

<sup>3</sup> 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).

<sup>4</sup> 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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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.

## Utilities Procurement

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

- €414,000 (or £345,028) in respect of supply and services contracts as well as design contests organised as part of procurement for services; and
- €5,186,000 (or £4,322,012) in respect of works contracts.

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

- €80,000 (or £66,672) for each lot of a supply and services contract; and
- €1,000,000 (or £833,400) 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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