

# Implications of the amended public procurement thresholds

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Every two years, the Cabinet Office is obliged to review the threshold figures contained within: (1) the Defence and Security Public Contracts Regulations 2011; (2) the Public Contracts Regulations 2015; (3) the Concession Contracts Regulations 2016; and (4) the Utilities Contracts Regulations 2016 (the “**Procurement Legislation**”).

This review is required by virtue of the UK’s participation in the World Trade Organisation Agreement on Government procurement (the “**GPA**”). The GPA, between 21 parties (including the US and the EU), seeks to ensure open, fair and transparent conditions of competition in the Government procurement market. The practical effect of the GPA is that suppliers from countries party to the agreement are treated equally to domestic suppliers in relation to certain types of procurement opportunities which exceed specified threshold figures.

In order to prepare appropriately and continue to meet their legal obligations, contracting authorities must be aware of the implications of this review and the amended threshold figures.

## The 2022 threshold figures

The Public Procurement (Agreement on Government Procurement) (Thresholds) (Amendment) Regulations 2021 (the “**Regulations**”) contains the revised threshold figures that take effect on 1 January 2022. These revised thresholds will not apply to any procurement which has commenced prior to the Regulations coming into force.

The revised threshold figures are:

| Regulation  | Type of Contract  | Existing Figure<br>(calculated excl. of VAT) | New Figure (calculated<br>inc. of VAT) |
|---|---|--|--|
| <b>Public Contracts<br/>Regulations 2015</b>      | Works contracts   | £4,733,252                                   | £5,336,937                             |
|   | Supply and service contracts awarded by<br>central Government | £122,976                                     | £138,760                               |
|   | Supply and service contracts awarded by<br>local Government   | £189,330                                     | £213,477                               |
| <b>Utilities Contracts<br/>Regulations 2016</b>   | Works contracts   | £4,733,252                                   | £5,336,937                             |
|   | Supply and service contract                                   | £378,660                                     | £426,955                               |
| <b>Concessions Contracts<br/>Regulations 2016</b> | Concession contracts  | £4,733,252                                   | £5,336,937                             |

Higher education institutions will often use the light touch regime for the provision of services linked to the provision of education and the relevant threshold for the award of a service contract has not been changed at £655,540 for both central Government bodies and sub-central authorities, although of course, taking VAT into account means that, as with all the other thresholds there is a decrease in contract value.

## Changes to the VAT position

The Regulations amend the VAT position of threshold figures (including the light touch regime). The threshold figures are now calculated inclusive of VAT and are applicable across the Procurement Legislation.

The Government is obliged to make this amendment to the calculation of threshold figures as the EU specific methodology for calculating threshold figures exclusive of VAT no longer applies to the UK. The UK must now accord with the standard methodology adopted by non-EU members of the GPA, which calculates threshold figures inclusive of VAT.

The implications of this VAT change mean that there has in real terms been a reduction in value of the threshold figures. As a result, a number of contracts which may have not have otherwise fallen within the scope of the relevant procurement regimes when calculated net of VAT may now be subject to the Procurement Legislation.

Closer consideration is going to have to be given to:

- Whether an authority that is not liable to pay VAT for certain goods and services, due to its status (charitable or otherwise), is still required to calculate the value of a contract as including VAT, thereby bringing more prospective contracts within the regulated procurement regime. The most risk-free approach would be to include VAT in such a calculation in order to avoid any uncertainty but that is less favourable to those organisations that have beneficial tax status.
- The potential that there is for inequality of treatment between contracting authorities if some do and some do not have to include VAT in their contract value calculations.

## Valuing a prospective contract

When determining the best procurement strategy, it is essential to consider the method of calculating the value of any contract.

When calculating the value of a contract, the estimated value must include all contractual costs that are payable over the life of the relevant contract including VAT. It is essential to include costs for the full duration of the contract, any extensions and the cost of any ancillary services or goods that may increase the total value of the contract.

It is important to consider the implications of aggregation on the value of any contract. In order to prevent an authority from purposely avoiding the requirement to carry out a procurement by renewing a contract below the relevant threshold, the value is taken across the amounts payable for not only the life of the contract but also any renewals within a 12 month period for purchasing goods or 48 months for service contracts.

Careful consideration is also required when it comes to the value under framework agreements. Fundamentally, a framework makes it easier to manage the process of testing the market and to streamline the procurement process. Each framework has a finite value and once call-off contracts have been awarded under that framework to that value, then a new separate contract or a new framework is required. It is important that contracting authorities pay close attention to the cumulative value of call-off contracts awarded under a framework in order to avoid any issues with the Procurement Legislation.

In addition to the points raised in this article, there is the ongoing review of the public procurement regime that may have further impact on calculating thresholds. We will provide further updates and training sessions when the new regime proposals become clearer.

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