

Consultation document

Draft Regulations implementing the new Public Sector and Utilities Procurement Directives

June 2005



OFFICE OF GOVERNMENT COMMERCE

CONSULTATION DOCUMENT

THE DRAFT REGULATIONS IMPLEMENTING:

- DIRECTIVE 2004/18/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 31/03/04 ON THE COORDINATION OF PROCEDURES FOR THE AWARD OF PUBLIC WORKS CONTRACTS, PUBLIC SUPPLY CONTRACTS AND PUBLIC SERVICES CONTRACTS
- AND DIRECTIVE 2004/17/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 31/03/04 COORDINATING THE PROCUREMENT PROCEDURES OF ENTITIES OPERATING IN THE WATER, ENERGY, TRANSPORT AND POSTAL SERVICES SECTORS

Contents

1. Executive Summary
 2. Introduction
 3. Main body of Consultation
 4. Consultation Criteria
- Annex A Partial Regulatory Impact Assessment (Public Sector)
Annex B Partial Regulatory Impact Assessment (Utilities)
Annex C List of those consulted
Annex D Link to text of Directives 2004/18/EC (Public Sector) and 2004/17/EC (Utilities)
Annex E Link to draft Regulations and Transposition tables

1. Executive Summary

OGC's consultation of May 2004 sought views on the approach to implementation of two new European procurement Directives 2004/18/EC (Public Sector) and 2004/17/EC (Utilities). The two consultation documents and OGC's response to the consultation exercise are available online at www.ogc.gov.uk, or via the following link: <http://www.ogc.gov.uk/index.asp?docid=1002407>.

The new Public Sector Directive brings together three previous Directives on public sector procurement (supplies, works, services) into one text. The other main changes in the new Directive centre on clarifying and modernising the existing texts to make the rules more helpful to today's public sector procurers and providers. The revised Utilities Directive updates the existing version – in particular on coverage and affiliated undertakings - and it introduces an exclusion mechanism for activities fully open to competition across the EU. In addition, it includes many of the changes made to the Public Sector Directive. The Directives have already been adopted at European level and cannot be changed in the implementation process, but they can be clarified in the implementing Regulations where appropriate.

Having considered comments from the May 2004 consultation exercise, OGC has now drafted UK implementing Regulations for both Directives. This second consultation is to gather views on the draft Regulations themselves, links to which are attached at Annex E.

Please note that the Directives are being implemented separately in Scotland, and will be the subject of separate consultation.

OGC would welcome views on the UK draft Regulations, both in terms of their content and their structure and ease of use.

In particular, we would welcome comments on the new provisions, most of which apply to both the Public Sector and the Utilities Directives:

- **Reserved contracts**
(Public Sector regulation 7, implementing Article 19; Utilities regulation 10 implementing Article 28)
- **Competitive dialogue**
(Public Sector regulation 18, implementing Article 29)
- **Framework agreements**
(Public Sector regulation 19, implementing Article 32)
- **Dynamic purchasing systems**
(Public Sector regulation 20, implementing Article 33; Utilities regulation 19 implementing Article 15)
- **Electronic auctions**
(Public Sector regulation 21, implementing Article 54; Utilities regulation 20 implementing Article 56)
- **Central purchasing bodies**
(Public Sector regulation 22, implementing Article 11; Utilities regulation 21 implementing Article 29)
- **Personal situation of the candidate or tenderer**
(Public Sector regulation 23, implementing Article 45; Utilities regulations 26 and 27, implementing Article 54)
- **Obligations relating to taxes, environmental protection etc**
(Public Sector regulation 38, implementing Article 27; Utilities regulation 35 implementing Article 39)
- **Subcontracting**
(Public Sector regulation 45, implementing Article 25; Utilities regulation 43 implementing Article 37)

We would also like to draw attention to the following points about the Public Sector Directive, listed in section 3.3:

- Standard forms
- Definitions
- Time limits
- Definition of "financial year"
- Onward transmission of information to the European Commission
- Use of the term "contract documents"
- The Alcatel mandatory standstill period
- Social and environmental issues

We would like to highlight several points that are specific to the Utilities Directive (see section 3.4):

- Coverage
- Article 23 on affiliated undertakings
- Article 30 on the new exclusion mechanism

And we would welcome comments on our plans for guidance, which are detailed in section 3.5.

The partial Regulatory Impact Assessments for these Regulations are attached at Annexes A and B.

OGC would welcome views on the draft Regulations by Monday 12 September 2005. Please send comments to charlotte.spencer@ogc.gsi.gov.uk.

2. Introduction

2.1 Background information

This consultation aims to gather views on the UK implementing Regulations for the new European Directives on procurement in the public sector (Directive 2004/18/EC) and procurement in the utilities sector (Directive 2004/17/EC).

Directives 2004/18/EC and 2004/17/EC were adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. They came into force on the day they were published in the Official Journal of the European Union on 30 April 2004 and must be implemented by the UK within 21 months of that date. This means that the Directives must be fully implemented in the UK by 31 January 2006. The texts of the Directives are available online and the URL is given in Annex D.

The Public Sector Directive sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds for works, services and supplies by contracting authorities as defined (state, regional or local authorities and bodies governed by public law). The Utilities Directive covers similar contracts in that sector. Directive 2004/18/EC replaces four similar existing EC Directives¹. Similarly, Directive 2004/17/EC replaces two existing Directives.²

The total public procurement spend across Europe represents over €1500 billion, which is over 16% of EU GDP. The procurement Directives are therefore of great significance. They are based on the principles of transparency, non-discrimination and competitive procurement, and facilitate the achievement of value for money for the taxpayer as well as promoting the single European market.

This consultation follows OGC's consultation of May 2004 on the approaches to take in implementing Directives 2004/18/EC and 2004/17/EC. The two consultation documents - one for the Public Sector Directive and one for the Utilities Directive - and OGC's published response are available online at www.ogc.gov.uk, or via the following link: <http://www.ogc.gov.uk/index.asp?docid=1002407>.

Having considered all the comments from this earlier consultation, OGC has now drafted UK implementing Regulations for both Directives and invites views from interested parties on these draft Regulations.

Please note that the Directives have already been adopted at European level and cannot now be changed. Where appropriate, however, we have included some clarification and elaboration of particular provisions in the draft Regulations, although we have avoided any unnecessary elaboration, or any elaboration which risks being at odds with the meaning of the Directive. We intend to provide written guidance on some of the more important or difficult issues. (see section 3.5).

¹ Directive 93/36/EEC concerning the award of public supplies contracts
Directive 93/37/EEC concerning the award of public works contracts
Directive 92/50/EEC concerning the award of public service contracts
Directive 97/52/EEC, the Public Authorities Directive, which amended the previous Directives

These Directives have been implemented in the UK via Regulations (Statutory Instruments) made under section 2(2) of the European Communities Act 1972:

Public Works Contracts Regulations 1991 (SI No. 1991/2680)
Public Supply Contracts Regulations 1995 (SI No. 1995/201)
Public Service Contracts Regulations 1993 (SI No. 1993/3228)

² Directive 93/38/EEC, amended by Directive 98/4/EC

2.2 Timetable for the implementation of the Directive

The Directives must be implemented into UK national law within 21 months of the date they were published in the Official Journal of the European Union. This means that implementation will need to be completed by 31 January 2006. The UK is proposing to achieve this by the making of two sets of Regulations under section 2(2) of the European Communities Act 1972.

It is a requirement of Community law that EU legislation should be implemented in an effective, timely and proportionate manner. In line with UK policy on implementing EU Directives, we intend to transpose the text of these Directives on time. Non-implementation or incomplete implementation would trigger infraction proceedings, and the UK would be liable to substantial penalties.

2.3 Timetable and practicalities for this consultation

2.3.1 Timetable and closing date

The consultation period lasts from 20 June until 12 September 2005. This allows 12 weeks for consultation. Please ensure your response reaches us by the closing date.

2.3.2 Devolved Administrations

Northern Ireland and Wales will be implementing with England, while Scotland has elected to implement independently. Scotland will therefore be circulating its own consultation paper in due course and enquiries should be sent directly to:

Iain Moore
Scottish Procurement Directorate
Scottish Executive
Meridian Court, 5 Cadogan Street
Glasgow G2 6AT
Telephone: 0141 242 5596

2.3.3 Consultees

We are seeking responses from public procurers including those in Government Departments and Local Authorities, as well as from the Chartered Institute of Purchasing and Supply, potential or actual suppliers, and the CBI and TUC. For the Utilities Regulations we are seeking views from Government Departments responsible for utilities as well as from utilities themselves. We would also welcome comments from the legal community, the academic community and other parties with an interest in the application of the procurement rules.

This document is being brought to the attention of the Consultees listed in Annex C. Please do bring it to the attention of others who would be interested or let us know their details so that we can do so.

2.3.4 How to respond

The Department would prefer any comments on the draft Regulations to be sent electronically to Charlotte Spencer at: charlotte.spencer@ogc.gsi.gov.uk.

Alternatively, written comments should be sent to:
Charlotte Spencer
Procurement Policy Unit
Office of Government Commerce

Trevelyan House, 26 – 30 Great Peter Street
London SW1 2BY
Tel: 020 7271 1441
Fax: 020 7271 1344

If you would like further copies of this consultation document it can be found on the Office of Government Commerce's website at www.ogc.gov.uk, or please contact Charlotte Spencer at the address given above.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and, where applicable, how the views of the members were assembled.

This consultation is being conducted in line with the Government's Code of Practice on Consultation. Please see section 4 of this document ("Consultation Criteria") for more information and how to contact OGC's designated consultation co-ordinator if you believe this consultation does not comply with the Code.

2.3.5 Outcome

We aim to publish a summary of responses to this consultation, along with a response from the Government, as soon as possible after the closing date.

Responses to this document will help inform the final version of the Regulations implementing Directives 2004/18/EC and 2004/17/EC. The final Regulations will be laid before Parliament within the deadline for implementation (January 31 2006).

2.3.6 Non-disclosure of responses

Your response to this consultation document may be disclosed publicly in whole or in part, including in accordance with dealing with a request under the Freedom of Information Act 2000. If you do not wish your response (including your identity) to be disclosed, please state this in your response, along with (a) the reasons why you wish the response not to be disclosed and (b) which parts of the response you wish us not to disclose.

Unless responses are exempt from disclosure, responses may be made available to any enquirer, including enquirers outside the UK, or published by any means, including on the internet. We will assume that you are content for us to do this, and that if you are replying by email your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your response to us.

All responses will be included in any statistical summary of numbers of comments received and views expressed.

2.4 Regulatory Impact Assessments

Partial Regulatory Impact Assessments are attached at Annexes A and B.

3. Main body of Consultation

3.1 General comments

We would welcome all comments on the draft Regulations, both in terms of their content, their structure and ease of use.

Please note that unless otherwise stated, references below to particular Article and Regulation numbers refer to the Public Sector Directive and implementing Regulations. Similarly, page references for OGC's May 2004 consultation document refer to the consultation on the Public Sector Directive. (The response to consultation document covered both Directives).

3.2 New provisions

In particular, we would welcome views on the new provisions, listed below.

3.2.1 Regulation 22 implementing Article 11 (Central Purchasing Bodies)

(Utilities – regulation 21 implementing Article 29)

Member States had the choice of whether or not to implement this Article, but in line with the responses to our earlier consultation, we have included it fully in the draft Regulations.

In the light of the many comments from the previous consultation exercise about the need to clarify Article 11, we will support this provision with guidance.

For previous comments on this Article, please see page 8 of the earlier consultation document and page 3 of OGC's response to consultation.

3.2.2 Regulation 7 implementing Article 19 (Reserved Contracts)

(Utilities – regulation 10 implementing Article 28)

This provision was also optional on Member States to implement. We believe, however, that this is a very important provision and one which, therefore, should be implemented. This will give contracting authorities the option of reserving contracts for sheltered workshops or for such contracts to be executed in the context of sheltered work as envisaged by the Directive.

We intend to support this regulation with guidance (see section 3.5 below), which will set out how procurers can best make use of the provision in a positive and constructive way. The draft regulation reflects the devolved approach to procurement decisions, where each Accounting Officer is responsible for his or her own procurement decisions and for achieving value for money for the taxpayer.

In drafting the definitions of 'sheltered workshop', 'sheltered employment programme', 'disabled person' and 'disability', we have taken on board comments from the earlier consultation, in particular from the Department for Work and Pensions, Remploy and the GMB Union, on what these terms mean in the UK.

For previous comments on this Article, please see page 9 of the earlier consultation document and page 4 of OGC's response to consultation.

3.2.3 Regulation 45 implementing Article 25 (Information on sub-contracting)

(Utilities – regulation 43 implementing Article 37)

Member States could choose whether to implement this Article as optional or mandatory on contracting authorities. To allow contracting authorities as much flexibility as possible, we have implemented it as optional - in other words a contracting authority *may* ask the tenderer to indicate any share of the contract he may intend to subcontract to third parties and the identity of any proposed subcontractors. The majority of respondents to our earlier consultation were in favour of this approach, and it squares with the devolved responsibility for procurement decisions.

For previous comments on this Article, please see page 9 of the earlier consultation document and page 5 of OGC's response to consultation.

3.2.4 Regulation 38 implementing Article 27 (Obligations relating to taxes, environmental protection etc.)

(Utilities – regulation 35 implementing Article 39)

Again, Member States could choose whether to implement this Article as optional or mandatory on contracting authorities and, in line with the majority of responses to the previous consultation, we have implemented it as optional. In other words, contracting authorities *may* state the body or bodies from which a tenderer can obtain appropriate information on obligations relating to taxes, to environmental protection, to employment protection provisions and to the working conditions which are in force in the Member State, region or locality for the works or services in question.

Draft regulation 38 clearly states that, where contracting authorities choose to include such information in the contract documents, they shall request that tenderers indicate they have taken these obligations into account when drawing up their tenders. However, we would like to remind respondents that this provision does not cover any other legislation beyond that which is explicitly listed.

For previous comments on this Article, please see page 10 of the earlier consultation document and page 6 of OGC's response to consultation.

3.2.5 Regulation 18 implementing Article 29 (Competitive Dialogue)

(This is not applicable to Utilities)

As explained in our previous consultation document, the final text for this Article was achieved after lengthy negotiation and lobbying, with the UK's aim being that the procedure should fit as much as possible with UK best practice on the award of PFI and PPP contracts. In implementing this Article we have remained as close as possible to the Directive text, because further elaboration could inadvertently reduce the flexibility that the Article provides, or could lead to criticism from the European Commission in the light of the detailed negotiations.

We intend to support this regulation with guidance – please see section 3.5 below.

For previous comments on this Article, please see page 10 of the earlier consultation document and page 7 of OGC's response to consultation.

3.2.6 Regulation 19 implementing Article 32 (Framework Agreements)

(These comments do not apply to Utilities, as the frameworks provision in the existing Utilities Directive has not changed)

Article 32 gives Member States the option of providing that contracting authorities may use framework agreements. As the use of framework agreements was already well established in the UK, and in line with the responses to the previous consultation, we have implemented this Article to provide that option.

We intend to update OGC's existing guidance on framework agreements, which covers this new Article – please see section 3.5 below.

For previous comments on this Article, please see page 11 of the earlier consultation document and page 8 of OGC's response to consultation.

3.2.7 Regulation 20 implementing Article 33 (Dynamic Purchasing Systems)

(Utilities – regulation 19 implementing Article 15)

Article 33 states that Member States 'may provide' that contracting authorities may use dynamic purchasing systems (DPS). In line with the majority of responses to our previous consultation, we have implemented the Article to give contracting authorities the option of using DPSs.

We intend to support this regulation with guidance – please see section 3.5 below.

For previous comments on this Article, please see page 12 of the earlier consultation document and page 9 of OGC's response to consultation.

3.2.8 Regulation 21 implementing Article 54 (Electronic auctions)

(Utilities – regulation 20 implementing Article 56)

Article 54 gives Member States the option of providing that contracting authorities may use electronic auctions. As e-auctions are already being used in the UK, and in line with the positive response to this Article in the previous consultation, we have implemented the provision fully, giving contracting authorities the opportunity to use e-auctions if they so wish. We will update existing guidance on e-auctions accordingly (see section 3.5 below).

For previous comments on this Article, please see page 13 of the earlier consultation document and page 11 of OGC's response to consultation.

3.2.9 Regulation 23 implementing Article 45 (Personal situation of the candidate or tenderer)

(Utilities – regulations 26 and 27 implementing Article 54)

Article 45 contains a new provision concerning the mandatory exclusion of candidates or tenderers if a contracting authority "is aware" that they have been found guilty of certain criminal offences set out in Article 45(1).

The implementing regulation has been drafted to clarify that "a contracting authority is aware" means a contracting authority having actual knowledge of such convictions. The offences covered by the Article have been transposed to reflect the offences relevant in the UK – listed as (a) to (d) in the draft regulation. The draft regulation is the subject of ongoing discussions

with the Criminal Records Bureau – in particular, on the identification of the “relevant competent authority” in the UK and the precise arrangements for obtaining information on economic operators or their directors. We will cover the detailed arrangements for this in accompanying guidance, rather than in the regulation itself.

For previous comments on this Article, please see page 12 of the earlier consultation document and page 10 of OGC’s response to consultation.

3.3 Other points in the Regulations

We would also like to draw attention to the following points in the Regulations.

(Please note that unless otherwise stated, references to particular Article and Regulation numbers refer to the Public Sector Directive and implementing Regulations.)

3.3.1 Standard Forms

Both the Public Sector and Utilities Regulations make reference to the Annexes to the Directives, which list the information that must be included in notices for publication in the Official Journal of the European Union (OJEU). The standard forms that contracting authorities are required to use for such notices will be available on the European Commission's SIMAP website at www.simap.eu.int.

3.3.2 Definitions

Article 1 of the Public Sector Directive is implemented in draft regulation 2. Article 1 of the Utilities Directive is also implemented in draft regulation 2 of the Utilities Regulations. We would welcome comments on all the definitions listed, and on the definition of “buyer profile” in particular.

3.3.3 Time limits

Article 38 of the Public Sector Directive is implemented in regulations 15, 16, 17 and 18 on the open, restricted, negotiated and competitive dialogue procedures.

An initial view from the European Commission is that it is possible to have minimum time limits of less than 22 days for receipt of tenders under the open and restricted procedures. Previously we had been unsure about this, as the wording in Article 38(4) states “but under no circumstances to less than 22 days”. However the Commission has now indicated that other parts of this Article allow for further reductions where notices are drawn up and transmitted by electronic means in accordance with Article 38(5), and where the contracting authority offers unrestricted and full direct access by electronic means as set out in Article 38(6). In such cases, it is possible to reduce the time limits for the receipt of tenders to a minimum of 10 days for the open procedure, and to 17 days for the restricted procedure.

For utilities the time limits are set out in Annex XXV of Directive 2004/17/EC.

3.3.4 Calculating contract value

Public sector regulation 8 implements Article 9 on methods for calculating contract value.

Following the responses to our previous consultation, we have transposed “amount payable” (the Public Sector Directive text) as “consideration payable”. We have also referred to “value” throughout the Regulations, as we believe that the Directive text, which refers to both “value”

and “cost” to cover similar concepts, is confusing and it is clearer to use one term consistently.

Article 9(7)(b) refers to “the financial year if that is longer than 12 months” and responses to the previous consultation exercise confirmed our view that this wording was unclear. An initial view from the European Commission has explained that they intend this to cover situations where the timing of the financial year has changed. For example, if a contracting authority has previously used a financial year from 1 May to 30 April and then changes to a period ending 31 December, the result would be that the financial year when the dates change is reduced to just 8 months. If they consider this period too short, the contracting authority may then decide that this particular financial year will be counted from, say, 1 May 2005 until 31 December 2006.

For previous comments on this Article, please see page 7 of the earlier Public Sector consultation document, page 8 of the earlier Utilities consultation document, and page 2 of OGC’s response to consultation.

3.3.5 Sending information to the Commission

Several Articles in the Public Sector Directive require Member States to pass particular information to the Commission, for example Article 75 contains an obligation for Member States to forward a statistical reports about the number of public contracts awarded in the previous year.

The Articles in question are:

- Article 31 (implemented in regulation 14)
- Article 43 (implemented in regulation 32)
- Article 55 (implemented in regulation 30)
- Article 75 (implemented in regulation 40(1))

As the Directive is phrased in terms of Member States forwarding information to the Commission, the implementing Regulations need to state a central body to whom contracting authorities should send this information for onward transmission to the Commission.

As the current Regulations were written before OGC was formed, they designate HM Treasury as this central body. However, since procurement policy and the EU public procurement rules are now the responsibility of OGC, we have replaced “Treasury” with “OGC” in the new Regulations. We have adopted a similar approach for the Utilities Regulations, and would welcome views on this.

3.3.6 Use of term “Contract documents”

In drafting regulations 15 to 18 on the open, restricted, negotiated and competitive dialogue procedures, we have used the term “contract documents” where the text of Article 40 says “specifications or ... descriptive document and any supporting documents”. This follows the approach taken in the existing Regulations, and enables consistent wording to be used throughout the Regulations (whereas the Directive refers variously to “contract documentation” and “contract documents”).

The term “contract documents” is defined in regulation 2(1) as: “the invitation to tender for or to negotiate the contract, the descriptive document (if any), the proposed conditions of contract, the specifications or description of the services, goods, work or works required by the contracting authority and of the materials or goods to be used in or for such work or works, and all documents supplementary thereto”.

For previous comments on this Article, please see page 12 of the earlier Public Sector consultation document, page 11 of the earlier Utilities consultation document, and page 9 of OGC’s response to consultation.

3.3.7 'Alcatel' standstill period

The final Regulations implementing Directive 2004/18/EC will include the requirements of the public sector compliance Directive 89/665/EEC, which provides for applications to the Court by aggrieved providers. The current UK procurement Regulations, which also implement the requirements of the compliance Directive, will shortly be amended as a result of the European Court of Justice judgment against Austria in the *Alcatel* case³, to reflect our detailed negotiations with the Commission on the implementation of *Alcatel* in the UK and following a separate forthcoming consultation exercise. The *Alcatel* provisions will also be incorporated into the draft Regulations implementing Directive 2004/18/EC. The Utilities provisions will be amended in a similar way.

3.3.8 Clarification of social and environmental criteria

The new Public Sector Directive clarifies the scope to include environmental and social issues in the public procurement process.

For example:

- Accessibility criteria must be included in the technical specification wherever possible, and 'green' production process standards and relevant part of eco-labels may be specified.
- At the selection stage procurers may consider relevant environmental and social aspects of technical capacity and ability (e.g. environmental management systems), and, in looking at track record, they can consider social and environmental offences among the grounds for exclusion.
- Relevant environmental characteristics relating to whole life costs and quality may be included in the award criteria.

We have implemented all these provisions and would therefore like to draw attention to the following draft Public Sector regulations:

- Regulation 7 implementing Article 19 (Reserved contracts).
- Regulation 9 implementing Article 23 (Technical specifications).
- Regulation 39 implementing Article 26 (Conditions for performance on contracts). (Please note we have implemented the Directive's provision that the contract conditions may include social and environmental considerations.)
- Regulation 38 implementing Article 27 (Obligations relating to taxes, environmental protection, employment protection provisions and working conditions).
- Regulation 30 implementing Article 53 (Contract award criteria). (Please note we have copied out the part of Article 53 that states most economically advantageous tender should be 'from the point of view of the contracting authority'.)
- Regulation 10 implementing Article 24 (Variants).

The opportunity to include environmental criteria in the public procurement process is set out in the OGC/Defra Joint Note on Environmental Issues in Purchasing⁴. Social issues will be covered in the forthcoming guidance on Social Issues in Purchasing, planned for publication in the summer of 2005.

³ Cases C-81/98 and C-212/02, *Alcatel Austria v Bundesministerium fuer Wissenschaft und Verkehr*

⁴ OGC/Defra's Joint Note On Environmental Issues In Purchasing is available online at <http://www.ogc.gov.uk/index.asp?id=400>

3.4 Specific points in the Utilities Regulations

Many of the issues dealt with under sections 3.2 and 3.3 above also apply to the Utilities Directive. The exceptions are the competitive dialogue procedure, which only applies to the Public Sector Directive, and the provision on framework agreements, which is new only to the Public Sector Directive (it already exists in the current Utilities Directive).

However the Utilities Directive also raises some issues that do not apply to the Public Sector Directive, namely: coverage; the provision on affiliated undertakings; and the new exclusion mechanism.

3.4.1 Coverage

In line with the majority of responses to our previous consultation, the structure in the existing Regulations concerning coverage has been maintained.

3.4.2 Regulation 7 implementing Article 23 (Affiliated Undertakings)

Here, the Directive text has been copied out. However to make the structure clearer, 'joint venture' has been defined once, rather than the two separate places it is defined in the Directive (in Articles 23(2)(b) and 23(4)(a)).

3.4.3 Regulation 9 implementing Article 30 (Exclusion Mechanism)

All responses to the consultation were in favour of allowing utilities to make direct requests to the Commission for exemption, as well as being able to go through the Government. Accordingly, the draft Regulations provide for direct requests from Utilities.

3.5 Guidance planned

We would welcome views on the areas we plan to cover in guidance, listed below.

Again, please note that unless otherwise stated (and except for section 3.5.8 about guidance on Article 30 of the Utilities Directive) references to particular Article and regulation numbers relate to the Public Sector Directive and implementing Regulations.

3.5.1 Regulation 22 implementing Article 11 (Central Purchasing Bodies)

To cover how central purchasing bodies should provide goods and organise framework agreements for other contracting authorities in compliance with the rules.

3.5.2 Regulation 7 implementing Article 19 (Reserved Contracts)

To include:

- The use of this provision in a positive way.
- How the provision fits with central purchasing bodies, framework agreements and dynamic purchasing systems.
- Sources of information about sheltered employment programmes and companies.

3.5.3 Regulation 18 implementing Article 29 (Competitive dialogue)

To include:

- Explanation of differences between the new competitive dialogue procedure and the existing negotiated procedure and which should be used in which situations.
- Clarification of how this provision applies to PPP/PFI projects and whether the negotiated procedure will still be possible for PFI/PPPs.
- Clarification of terms which are not defined in the Regulations, eg "particularly complex contracts", "technical means", "legal and/or financial makeup".
- What is meant by contracting authorities being allowed to "specify prices or payments".
- Explanation of the process of applying award criteria to reduce the number of potential solutions, prior to the final invitation to tender.
- Explanation of what further changes to the documentation can be made after the provider has been chosen.

3.5.4 Regulation 19 implementing Article 32 (Framework agreements)

To include:

- How to categorise goods and services within a framework.
- Aspects of running a mini competition.
- Using negotiation at the call-off stage.
- Further clarity on what might count as "exceptional circumstances" for agreeing frameworks of more than 4 years.
- Whether the 4 year limit provides for extension options.
- How contracts can be reserved for sheltered workshops under framework agreements.
- The requirement to include a specified period of time and value in contracts called off under the framework.
- What is meant by "contracting authorities shall consult in writing the economic operators capable of performing the contract".
- The use of pricing mechanisms.

3.5.5 Regulation 20 implementing Article 33 (Dynamic purchasing systems)

To include:

- Clarification of the "exceptional circumstances" needed to justify a dynamic purchasing system (DPS) longer than 4 years.
- Clarification of the rules on the length of contracts within the DPS, and whether there are any restrictions to the length.
- How the simplified contract notice gets published.
- What is meant by "commonly used purchases" and "solely electronic".
- Whether customers can be charged for using a DPS by the authority setting up the system.

3.5.6 Regulation 23 implementing Article 45 (Personal Situation of the Candidate or Tenderer)

To include:

- Outcome of discussions with the Home Office and the Criminal Records Bureau as to how this article will work in practice.
- What is required by being aware of candidates' or tenderers' relevant convictions; whether this covers suppliers convicted worldwide, or just convicted by Member States; how contracting authorities can show they have made reasonable effort to do this.
- What is meant by derogation on the basis of general interest.
- Whether the convictions are time-bound, and what to do if any surface after the contract award.
- Whether "candidate or tenderer" applies to companies as well as directors.

- What the voluntary exclusions consist of.

3.5.7 Regulation 21 implementing Article 54 (Electronic auctions)

We plan to supplement existing guidance on e-auctions, to include the use of e-auctions under framework agreements.

3.5.8 Exclusion mechanism in Article 30 of the Utilities Directive

As the Article 30 exclusion mechanism is a new process, detailed guidance will be provided along with the EU Commission's decision of 7 January 2005 (2005/15/EC) on the detailed rules for the application of Article 30 procedures. It should be noted that successful applications will allow for an exemption from the new Regulations and not the existing Regulations.

4. Consultation Criteria

This consultation is being conducted in line with the Code of Practice on Consultation.

The six main criteria of this Code of Practice are listed below, and the full code can be accessed at <http://www.cabinet-office.gov.uk/regulation/Consultation/Code.htm>.

The Six Consultation Criteria:

- 1) Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- 2) Be clear about who may be affected, what questions are being asked, and the timescale for responses.
- 3) Ensure that your consultation is clear, concise and widely accessible.
- 4) Give feedback regarding the responses received and how the consultation process influenced the policy.
- 5) Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- 6) Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

If you feel that the consultation does not satisfy these criteria please contact OGC's designated consultation co-ordinator:

Catherine Moody
Enterprise Team, Regulation and Business Finance branch
HM Treasury
1 Horse Guards Road
London
SW1A 2HQ
Tel: 020 7270 4358

Email: Catherine.Moody@hm-treasury.x.gsi.gov.uk

Annex A – Partial Regulatory Impact Assessment for Public Sector Regulations

1. Purpose and Intended Effect of the Measure

1.1 Objective

The EU public procurement rules seek to ensure that public sector bodies award contracts in an efficient and non-discriminatory manner. Directive 2004/18/EC aims to simplify, clarify and modernise the existing EU rules for public procurement. The Directive brings together the three separate existing Directives⁵, for public works, supplies and services contracts into a single text. To take account of modern procurement techniques, there are new provisions facilitating the use of e-procurement, providing for competitive dialogue in the award of complex contracts, and explicitly providing for the use of framework agreements. There is also greater clarity on the extent to which social and environmental issues can be considered during the procurement process.

1.2 Background

In 2001 total public procurement spend represented 16.2% of EU GDP - around €1500 billion. The procurement Directives are therefore of great significance. They are based on the principles of transparency, non-discrimination and competitive procurement, and facilitate the achievement of value for money for the taxpayer as well as promoting the single European market.

Directive 2004/18/EC was adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. It came into force on the day it was published in the Official Journal of the European Union on 30 April 2004 and must be implemented within 21 months of that date, which means it must be fully implemented in the UK by 31 January 2006. We propose to achieve this by the making of Regulations under section 2(2) of the European Communities Act 1972.

The text of the Directive is available online⁶. It sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds for works, services and supplies by contracting authorities as defined (state, regional or local authorities and bodies governed by public law).

The Directive has already been adopted at European level and cannot now be changed. Where appropriate, however, we have included some clarification and elaboration of particular provisions in the draft Regulations, although we have avoided unnecessary elaboration, or any elaboration which risks being at odds with the meaning of the Directive. We intend to provide written guidance on some of the more important or difficult issues.

1.3 Devolution

Northern Ireland and Wales will not be implementing independently, while Scotland has elected to do so.

1.4 Risk assessment

This Directive should not involve any additional risks to either procurers or providers as explained below.

⁵ Directive 93/36/EEC concerning the award of supplies contracts
Directive 93/37/EEC concerning the award of works contracts
Directive 92/50/EEC concerning the award of services contracts
A fourth Directive, 97/52/EC, amended the previous Directives

⁶ http://www.europa.eu.int/eur-lex/en/archive/2004/l_13420040430en.html

This Directive re-enacts most of the provisions in the existing Directives, while simplifying, clarifying and modernising them. It will benefit public sector bodies awarding contracts by improving efficiency and effectiveness and by allowing them to take advantage of modern procurement techniques in order to achieve value for money. The points of clarification provide greater legal certainty to public bodies and their suppliers, and the simplification will reduce the burden on all in terms of adhering to the requirements of the Directives.

Even if the European Directives did not exist, UK policy and the EU Treaty would require contracting authorities to follow similar rules, such as obligations to advertise, because they ensure value for money and transparency. The consolidation of Directives and clarification of certain points in the new Directive should lead to a greater increase in efficiency in this area.

Not having such legislation would, amongst other things, allow other EU member states to adopt 'buy national' policies to the detriment of British companies, would risk corruption, and would jeopardise the achievement of the UK policy of value for money (VFM) if contracts are not awarded through a competitive process.

Many of the new elements of this Directive are in any case permissive, in that the contracting authorities have the choice to make use of them. It is not compulsory for contracting authorities to use facilities, such as frameworks, but if they do choose to, they must follow the rules set out in the Directive. Many of the new facilities are already being used in Member States, such as with frameworks and e-auctions in the UK. The Directive simply clarifies their use under the legal framework.

2. Options

2.1 Option 1 – Do nothing

Non-implementation of the Directive would trigger infraction proceedings and the UK would be liable for substantial penalties. We therefore intend to implement the Directive, in line with our EU Treaty obligations.

2.2 Option 2 – Implement Directive into UK law

The options for implementation are constrained by the requirements of the Directive, which has already been adopted at the European level. Within these constraints there are a number of Articles in the Directive where Member States have choices as to how, and in some cases, whether, to implement particular provisions. Following responses to our 2004 consultation on the approach to take, we have drafted implementing regulations for all these Articles:

Article 9	Methods of calculating contract value
Article 11	Central purchasing bodies
Article 19	Reserved contracts and sheltered workshops
Article 25	Information on sub-contracting
Article 27	Obligations relating to taxes, environmental protection etc
Article 29	Competitive dialogue
Article 32	Framework agreements
Article 33	Dynamic purchasing systems
Article 45	Personal situation of the candidate or tenderer
Article 54	Electronic auctions

3. Costs and Benefits

3.1 Business sectors affected

It is the public sector that must comply with the rules, and there is therefore no direct effect on business.

There may be an indirect effect on those businesses that contract with the public sector, where the contracts concerned exceed the thresholds set by the Directives. However, as this Directive simplifies and clarifies rules that already exist, it should not cause any additional burdens for contracting authorities, tenderers or providers.

3.2 Regulatory burden

The new Directive is a simplification and clarification of existing regulation. Moreover, new provisions in the Directive such as electronic auctions and the competitive dialogue procedure allow greater flexibility in the public procurement process.

3.3 Compliance Costs

There will be no compliance costs for business.

3.4 Impact on public sector bodies

As the Directive clarifies, simplifies and modernises legislation that already exists, it should not cause any additional costs for public sector bodies, nor should it affect front line delivery of services.

3.5 Equity and Fairness

There should be no disproportionate effect on particular business sectors, and public sector bodies in other EU Member States will also be subject to the rules in the same way.

3.6 Environmental/Social costs

There will be no costs imposed of an environmental or social nature.

4. Consultation with small business: the Small Firm's Impact Test

As discussed in section 3, the Directive impacts directly on public sector purchasers, rather than suppliers, providers or SMEs, and does not change the position under the existing EU procurement rules.

5. Competition assessment

This Directive binds only the public sector. The Directive sets out the procedures to follow for public procurements above certain thresholds, but these will not affect any particular suppliers and providers more than others.

As with the previous procurement Directives it replaces, this Directive is intended to facilitate greater competition by opening up markets.

6. Enforcement and sanctions

The EC Public Sector Remedies Directive⁷ requires Member States to provide for effective and rapid domestic review mechanisms addressing alleged breaches of EC public procurement law and national implementing rules. This Remedies Directive is, therefore, a crucial element in ensuring the effective application of the procurement rules set out in this Directive.

⁷ Directive 89/665/EEC

Under the Remedies Directive, Member States must have bodies which are empowered to review the application of public procurement procedures, to administer quick and effective interim measures to suspend such procedures or decisions, to prevent and correct infringements, and, ultimately, to set aside⁸ unlawful decisions and award damages. These bodies can be judicial or administrative in nature and Member States have a certain amount of flexibility in how they choose to administer their domestic review proceedings. In the UK, the judicial model was chosen. A tenderer who considers that a procurement has been conducted in breach of the EC procurement directives can take proceedings to the High Court (Court of Session in Scotland).

The European Commission is expected to bring forward proposals for the review of the Remedies Directive by the end of 2005.

7. Consultation

In developing its policy and negotiating line leading up to the agreement of the new Directive, OGC consulted widely including the Chartered Institute of Purchasing and Supply, Confederation of British Industry, Department for Environment, Food and Rural Affairs, the Scottish Executive, the Welsh Assembly Government, Northern Ireland, Heads of Procurement in other Government Departments, Office of the Deputy Prime Minister, Small Business Service and Trade Union Congress.

Once the Directive was adopted at European level, we also consulted on the approach to take in implementing it into UK law in 2004. A total of 255 responses were received from a range of interested parties including Government departments, local authorities, law firms, suppliers, trade unions and pressure groups. OGC's proposal was to include in the Regulations all the new optional provisions, but to implement these as optional on contracting authorities, to allow for the maximum flexibility. The majority of responses agreed with this approach. Guidance was requested to supplement some of the new provisions, and OGC intends to provide this before implementation.

We are now consulting on the draft Regulations themselves, before they are finalised and laid before Parliament.

8. Monitoring and review

In monitoring and reviewing the application of the Directive and Member States' implementing Regulations, the Commission will be assisted by the Advisory Committee for Public Contracts made up of representatives from Member States.

In both the existing and new Directives, there is a requirement on Member States to supply the Commission with statistics on public procurement in the aim of monitoring the effect of these public procurement rules. Accordingly, we have included in the draft Regulations a requirement for contracting authorities to send these statistics to OGC, for onward transmission to the Commission.

9. Summary and Recommendation

Now that this Directive has been adopted at the European level, we have no option but to implement it into UK law by the deadline of 31 January 2006.

The impact of this Directive is limited because:

⁸ A 'set aside' is when a decision is declared illegal and to all intents and purposes null and void.

- Many of the provisions and rules in the new Directive are already in place in the existing Directives.
- Many of the new provisions are permissive. They allow contracting authorities the choice to make use of them.
- Many of the new provisions reflect existing best practice in the UK, and are already in use.
- The requirements of this Directive are on contracting authorities and not the private sector.

As discussed in section 2, there are a number of Articles in the Directive where we have the option to implement particular provisions. We believe it is right for contracting authorities to have these provisions available, and that is reflected in the draft Regulations.

Annex B – Partial Regulatory Impact Assessment for Utilities Regulations

1. Purpose and Intended Effect of the Measure

1.1 Objective

This Directive sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds for works, services and supplies by utilities. The procurement rules seek to ensure that utilities award contracts in an efficient and non-discriminatory manner. Directive 2004/17/EC aims to simplify, clarify and modernise the existing EU rules for procurement⁹ by the utilities. There are new provisions to take account of modern procurement techniques such as the use of electronic procurement. There is also greater clarity on the extent to which social and environmental issues can be given consideration during the procurement process.

1.2 Background

In 2001 total public procurement spend represented 16.2% of EU GDP - around €1500 billion. The procurement Directives are therefore of great significance. They are based on the principles of transparency, non-discrimination and competitive procurement, and facilitate the achievement of value for money for the taxpayer as well as promoting the single European market.

The new Utilities Directive (2004/17/EC) was adopted by the EU's Council of Ministers and the European Parliament on 31 March 2004. It came into force on the day it was published in the Official Journal of the European Union on 30 April 2004 and must be implemented within 21 months of that date, which means it must be fully implemented in the UK by 31 January 2006. We propose to achieve by the making of Regulations under section 2(2) of the European Communities Act 1972.

The text of the Directive is available online¹⁰. It sets out the procedures to be followed at each stage of the procurement process leading to the award of contracts above certain thresholds for works, services and supplies, as defined in the Directive.

The Directive has already been adopted at European level and cannot now be changed. Where appropriate, however, we have included some clarification and elaboration of particular provisions in the draft Regulations, although we have avoided unnecessary elaboration, or any elaboration which risks being at odds with the meaning of the Directive. We intend to provide written guidance on some of the more important or difficult issues.

1.3 Devolution

Northern Ireland and Wales will not be implementing independently, while Scotland has elected to do so.

1.4 Risk assessment

This Directive should not involve any additional risks to either procurers or providers as explained below.

This Directive re-enacts most of the provisions in the existing Directives, while simplifying, clarifying and modernising them. It will benefit utilities awarding contracts by improving efficiency and effectiveness and by allowing them to take advantage of modern procurement techniques in order to achieve value for money. The points of clarification provide greater legal

⁹ The Utilities Directive 93/38/EEC as amended by Directive 98/4/EC and implemented into UK law as The Utilities Contracts Regulations 1996, amended by The Utilities Contracts (Amendment) Regulations 2001

¹⁰ http://www.europa.eu.int/eur-lex/en/archive/2004/l_13420040430en.html

certainty to utilities and their suppliers, and the simplification should reduce the burden on all in terms of adhering to the requirements of the Directives.

Not having such legislation would, amongst other things, allow other EU member states to adopt 'buy national' policies to the detriment of British companies, would risk corruption, and jeopardise the achievement of value for money if contracts are not awarded through a competitive process.

The utilities regime has always allowed for more flexibility than the public sector regime and already provides for frameworks. Many of the new elements of this Directive are in any case permissive, in that the contracting entities have the choice to make use of them. It is not compulsory for contracting entities to use new facilities, such as e-auctions, but if they do choose to, they must follow the rules set out in the Directive. In addition, many of the new facilities are already being used in Member States, such as with e-auctions the UK. The Directive simply clarifies their use under the legal framework.

2. Options

2.1 Option 1 – Do nothing

Non-implementation of the Directive would trigger infraction proceedings, and the UK would be liable to substantial penalties. We therefore intend to implement the Directive, in line with our EU Treaty obligations.

2.2 Option 2 – Implement Directive into UK law

The options for implementation are constrained by the requirements of the Directive, which has already been adopted at European level. Within these constraints there are a number of Articles in the Directive where we have choices as to how, and in some cases, whether, to implement particular provisions. Following responses to our 2004 consultation on the approach to take in implementing the Directive, we have drafted implementing regulations for all these Articles:

Article 15	Dynamic purchasing systems
Article 17	Methods of calculating contract value
Article 28	Reserved contracts and sheltered workshops
Article 29	Central purchasing bodies
Article 30	Exemption mechanism
Article 39	Obligations relating to taxes, environmental protection etc
Article 54	Criteria for qualitative selection
Article 56	Electronic auctions

3. Costs and Benefits

3.1 Business sectors affected

The Directive does not impose any burdens on business generally and the savings from increased competition and structured procurement will considerably outweigh the costs of compliance.

The current Utilities Directive already applies to operators in the energy, water, transport and telecommunications sectors. There is a lighter regime for oil and gas operators. Postal services have been brought in to the new Directive, while telecommunications have been removed. The Directive contains exclusions and there is a new provision allowing utilities operating in areas directly exposed to competition to apply for exemption. The Directive will not bear directly on the undertakings who wish to provide the utilities with supplies, works and services.

3.2 Regulatory burden

The new Directive is a clarification of existing regulation. Moreover, new provisions in the Directive such as electronic auctions allow for greater flexibility in the procurement process.

3.3 Compliance costs

The utilities are already complying with most of the new Directive. It allows for up-to-date, useful tools such as electronic procurement, which are intended to create savings and are therefore of benefit to utilities.

Under this new Directive, the telecommunications sector has been removed from the regime, which reduces the burdens on them. In addition, some utilities have expressed an interest in taking advantage of an exclusion mechanism, whereby contracts for activities which are directly exposed to competition on markets to which access is not restricted can be removed from the application of the Directive. This is covered in more detail in the consultation document we are circulating. Again, this should create a reduction of burdens overall.

3.4 Impact on public sector bodies

As the Directive clarifies, simplifies and modernises legislation that already exists, it should not cause any additional costs for public sector bodies, nor should it affect front line delivery of services.

3.5 Equity and Fairness

There should be no disproportionate effect on particular business sectors, and public sector bodies in other EU Member States will also be subject to the rules in the same way.

3.6 Environmental/Social costs

There will be no costs imposed of an environmental or social nature.

4. Consultation with small business: the Small Firm's Impact Test

As discussed in section 3, the Directive impacts directly on utilities purchasers rather than on suppliers, providers or SMEs, and does not change the position under the existing EU procurement rules.

5. Competition assessment

This Directive binds only the utilities sector. The Directive sets out the procedures to follow for utilities' procurements above certain thresholds, but these will not impact on any particular suppliers and providers more than others.

As with the previous procurement Directives it replaces, the Directive is intended to facilitate greater competition by opening up markets.

6. Enforcement and sanctions

There is a Utilities Remedies Directive¹¹ which requires Member States to provide for effective and rapid domestic review mechanisms addressing alleged breaches of EC public procurement law and national implementing rules. This Remedies Directive is, therefore, a crucial element in ensuring the effective application of the procurement rules set out in this Directive.

¹¹ Directive 92/13/EEC

Under the Remedies Directive, Member States must have bodies which are empowered to review the application of public procurement procedures, to administer quick and effective interim measures to suspend such procedures or decisions, to prevent and correct infringements, and, ultimately, to set aside¹² unlawful decisions and award damages. These bodies can be judicial or administrative in nature and Member States have a certain amount of flexibility in how they choose to administer their domestic review proceedings. In the UK, the judicial model was chosen. A tenderer who considers that a procurement has been conducted in breach of the EC procurement directives, can take proceedings to the High Court (Court of Session in Scotland).

The European Commission is expected to bring forward proposals for the review of the Remedies Directive by the end of 2005.

7. Consultation

In developing its policy and negotiating line leading up to the agreement of the new Directive, OGC consulted widely including utilities, the Chartered Institute of Purchasing and Supply, Confederation of British Industry, Department for Environment, Food and Rural Affairs, the Scottish Executive, the Welsh Assembly Government, Northern Ireland, Heads of Procurement in other Government Departments, Office of the Deputy Prime Minister, Small Business Service and Trade Union Congress.

Once the Directive was adopted at European level, we also consulted on the approach to take on implementing it into UK law in 2004. In addition to the 255 respondents on the Public Sector Directive, many of whom stated that their comments also applied to the Utilities Directive, 9 respondents explicitly commented on the Utilities Directive. These comments particularly referred to the exclusion mechanism in Article 30, where all responses were in favour of allowing utilities to make direct requests to the Commission for exemption.

We are now consulting on the draft Regulations themselves, before they are finalised and laid before Parliament.

8. Monitoring and review

In monitoring and reviewing the application of the Directive, the Commission will be assisted by the Advisory Committee for Public Contracts, made up of representatives from Member States.

In both the existing and new Directives, there is a requirement on Member States to supply the Commission with statistics on public procurement in the aim of monitoring the effect of these public procurement rules.

9. Summary and Recommendation.

Now that this Directive has been adopted at the European level, we have no option but to implement it into UK law. The impact of this Directive is limited because:

- Many of the provisions and rules in the new Directive are already in place in the existing Directives.
- Many of the new provisions are permissive. They allow contracting entities the choice to make use of them.
- Many of the new provisions are best practice and are already being made use of.
- The requirements of this Directive are on contracting entities not the wider private sector.

¹² A 'set aside' is when a decision is declared illegal and to all intents and purposes null and void.

As discussed in section 2, there are a number of Articles in the Directive where we have the option to implement particular provisions. We believe it is right for contracting entities to have these provisions available and that is reflected in the draft Regulations.

Annex C – List of Those Consulted

BIP
Accenture
Achilles
Allen & Overy
Amec plc
Association of Consulting Engineers
Association of Electricity Suppliers
Atkins
Atos Origin
BAA
Baker & McKenzie
Balfour Beatty plc
Bar Council
Best Practice Group plc
Bevan Ashford
Bird & Bird
BLWA, The Association of the Laboratory Supply Industry
Bovis Lend Lease
Brent Council
Brick Court Chambers
Bristol City
British Broadcasting Corporation
British Chambers of Commerce
BT
Cabinet Office
Cabinet Office Legal Advisors
Cable & Wireless
Cap Gemini
Capita Group plc
Carillion plc
Catholic Agency for Overseas Development
Centre for Management and Policy Studies (CMPS)
CENTREX
Charity Commission
Chartered Institute of Purchasing and Supply
Clifford Chance
Clyde&Co
Coal Authority
COI Communications
Commission for Racial Equality
Computer Sciences Corporation
Confederation of British Industry
Costain Group plc
Court Service
Criminal Justice Information Technology
Criminal Records Bureau

Crown Estate
Crown Office & Procurator Fiscal Service
Crown Prosecution Service
Deloitte LLP
Denton Wilde Sapte
Department for Constitutional Affairs
Department for Culture Media & Sport
Department for Education & Skills
Department for Environment Food & Rural Affairs
Department for International Development
Department for Trade and Industry
Department for Transport
Department for Work & Pensions
Department of Finance & Personnel, Northern Ireland
Department of Health
Department of Trade and Industry
Departmental Solicitor's Office, Northern Ireland
Disability Rights Commission
DLA
Dorset County Council
EEF, the Manufacturers' Organisation
Energis
English Heritage
Environment Agency
EPR Architects Limited
Export Credits Guarantee Department
Federation of Small Businesses
Food Standards Agency
Foreign & Commonwealth Office
Forestry Commission
Forum of Private Business
Freshfields
Fujitsu Services
Global Crossing
Global to Local
GMB
Government Actuary's Department
Government Communications Headquarters
Government of Gibraltar
Hammonds
Health & Safety Executive
Hedra Plc
Herbert Smith
Hewlett Packard
Highways Agency
HM Land Registry
HM Prison Service
HM Revenue & Customs

HM Treasury
Home Office
Home Office Legal Advisors
House Of Commons
IBM
IdeA
Inland Revenue
Institute of Directors
Institute of Management Consultancy
Jarvis plc
Jobcentre Plus
KPMG LLP
Law Society
Local Government Association
LogicaCMG
Management Consultancies Association
MCC Ltd
Ministry of Defence
Monckton Chambers
National Assembly for Wales
National Audit Office
National Savings & Investments
NHS Purchasing & Supply Agency
Nottingham University
Office for National Statistics
Office of Government Commerce
Office of the Deputy Prime Minister
Office of Water Services
OFGEM
OGCbuying.solutions
Ordnance Survey
PA Consulting Group
Parliamentary Estates Directorate
Pinsent Masons
Police Information Technology Organisation
Post Office
Postal Services Commission
PwC
Remploy
Royal Mail
Royal National Institute for the Blind
Rural Payments Agency
Schofield Sweeney Solicitors
Scottish Executive
SEC Specialist Engineering Contractors Group
Serco Group plc
Serious Fraud Office
Shepherd & Wedderburn

Siemens Business Services
Singletons Solicitors
Small Business Service
Stanford Consulting
Tenders Direct
Treasury Solicitor's Department
TUC
Unicorn
Waste & Resources Action Programme
Welsh Procurement Initiative
Women and Work Commission

Annex D – text of Directives 2004/18/EC and 2004/17/EC

The text of Directives 2004/18/EC (on procurement in the public sector) and 2004/17/EC (on procurement in the utilities sector) can be accessed via the following URL:

http://www.europa.eu.int/eur-lex/en/archive/2004/l_13420040430en.html

Annex E – Draft Statutory Instruments and Transposition Tables

The following documents are available on the 'Procurement Policy and EU Rules' section of OGC's website (www.ogc.gov.uk), or via this link: <http://www.ogc.gov.uk/index.asp?id=1003745>.

- Draft Regulations implementing Directive 2004/18/EC on procurement in the public sector
- Draft Regulations implementing Directive 2004/17/EC on procurement in the utilities sector
- Transposition table for the draft Public Sector Regulations
- Transposition table for the draft Utilities Regulations