



## Brief 5

September 2016

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### Public Procurement

# Understanding the EU Financial Thresholds

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## Current thresholds

The Public Sector Directive (the Directive)<sup>1</sup> only applies to contracts of a specified type and of a value that meets or exceeds the relevant EU financial threshold.

### General Thresholds

The thresholds change on a regular basis, generally every two years. For the period from 1 January 2016 to 31 December 2017, the general thresholds for contracting authorities are the following:

- EUR 5 225 000 for works
- EUR 209 000 or EUR 135 000 for supplies and services
- EUR 750 000 for light regime services
- EUR 5 225 000 for concessions

The current financial thresholds can be verified on the website of the European Commission: [www.simap.europa.eu](http://www.simap.europa.eu)

These thresholds reflect the level at which the EU assumes that cross-border trade is likely. It is possible that, depending on the circumstances, economic operators may be interested in below-threshold contracts in other EU Member States. The thresholds are also set so as to ensure that the administrative costs of applying a full EU tender procedure are justified as proportionate to the value of the contract being advertised.

There are a number of financial thresholds; different thresholds apply to different types of contracting authorities and also to different types of contracts. Contracting authorities therefore need to know which type of contracting authority they are considered to be and what they are purchasing in order to determine the correct threshold.

Some quite complex provisions govern the calculation of the value of contracts. In addition, specific provisions cover the calculation of the value of framework agreements, dynamic purchasing systems, design contests, and works concession contracts.

### When are the financial thresholds set?

The financial thresholds are generally fixed for a period of two years and are amended every two years, with effect from 1 January. Amendments are made by means of European Commission Regulations. Provisions allow for the amendment of the financial thresholds at other times. The current financial thresholds can be found on the European Commission's website: [www.simap.europa.eu](http://www.simap.europa.eu)

**General thresholds for works, supplies and services contracts:** These general thresholds are not the only thresholds, but they are the ones that are most commonly referred to in practice, as they apply to the majority of types of contracts advertised by contracting authorities.

The thresholds are different for 1) works contracts, 2) supplies and services contracts, and 3) light regime service contracts. The threshold for works contracts is far higher than the thresholds for supplies, services and light regime service contracts.

There are two different thresholds for supplies and services contracts. The lower threshold applies to most purchasing by public bodies, subject to the World Trade Organization's

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<sup>1</sup> Directive 2014/24/EU on public procurement and repealing Directive 2004/18/EC, 26 February 2014.

Government Procurement Agreement (GPA), and the higher threshold applies to other contracting authorities that are not subject to the GPA.

**Other thresholds:** There are other specific thresholds for small lots, subsidised works and subsidised services contracts, contracts in the field of security and defence subject to the Defence Directive<sup>2</sup>, and concession contracts subject to the Concessions Directive<sup>3</sup>.

### Which principles apply to the calculation of the financial thresholds?

A number of general principles apply to the calculation of the estimated value of all types of contracts:

- The calculation is based on the total amount payable or the total value of the contract, and in the case of frameworks and dynamic purchasing systems and contracts divided into lots, the amount is the total value of all potential contracts to be awarded under the arrangement.
- All financial and non-financial elements that may be paid are counted, including payments from third-party sources.
- The estimated value of the contract must take into account the estimated total amount, including all options and renewals (even if those options or renewals are not subsequently exercised) as well as all prizes and other payments made to all candidates or tenderers.
- The calculation excludes value-added tax.
- There must be no sub-division of contracts aimed at deliberately avoiding the application of the Directive.
- The estimate must be valid at the moment when the contract-specific contract notice is dispatched to the Office of the Official Journal of the European Union (OJEU), or where such a notice is not required, at the moment when the contracting authority commences the contract award procedure.

### Do other rules apply to the calculation of the value of contracts?

In addition to these general principles, important detailed rules apply to the calculation of the value of each type of contract and also to the calculation of the value of a contract in specific circumstances. Contracting authorities must consider these rules carefully when calculating the value of contracts.

The main aims of the general principles and the specific provisions relating to the calculation of the value of the contracts are to ensure that 1) there is a genuine and transparent pre-estimate of the value of the contract to be awarded, and 2) the contracting authority does not attempt to avoid the application of the Directive, for example by splitting a requirement or a contract into smaller sub-threshold packages or contracts.

These rules cover how similar or repeated requirements are treated and how to deal with contracts where the term or value may be uncertain, and the rules include a waiver for small contracts in the context of lots. The rules also include provisions covering the situation where a contracting authority awards a number of contracts for a particular project or a number of contracts for similar supplies or services. The term often used to refer to the requirements involved when taking into account a number of contracts or a number of repeated or similar requirements is “aggregation”.

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<sup>2</sup> Directive 2009/81/EC on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security and amending Directives 2004/17/EC and 2004/18/EC, 13 July 2009.

<sup>3</sup> Directive 2014/23/EU on the award of concession contracts, 26 February 2014.

## Contracts below the EU financial thresholds

**Aggregation provisions:** The requirements for calculating whether a contract has a value signifying that it must be advertised using a contract notice published in the *OJEU* are relevant for all contracts, even those that may appear to be below the EU financial thresholds, in order to establish whether or not the Directive applies.

The aggregation provisions mean that, for example, a number of similar contracts, each of which is below the EU financial threshold, may still be subject to the Directive. The reason for these provisions is that the total value of all of the contracts must be aggregated if certain conditions are met, and the total value may then exceed the EU financial threshold. The Directive will then apply to all of the contracts.

**Rule applying to sub-threshold contracts:** Statistics demonstrate that the majority of contracts that are awarded by contracting authorities are not subject to the requirement to advertise in the *OJEU*. For example, the contract may be of a type that is not subject to those obligations or it may be of low value and therefore does not meet the EU financial thresholds.

EU Member States have generally opted to introduce their own rules for sub-threshold contracts and other contracts that are not subject to the detailed procurement requirements of the Directive. Individual contracting authorities may also be permitted or required to publish and follow their own internal purchasing rules, which may include the introduction of additional national and/or local financial thresholds.

National and/or local financial thresholds may trigger different types of requirements in terms of advertising and tender processes. These requirements help to ensure transparency and equal treatment. For example:

- Direct invitations, which may be allowed for very low-value contracts;
- Simplified procedures, such as competitive quotes or requests for proposals from a specific number of economic operators, or local advertising and a local competitive process for medium-value contracts that are below the EU threshold levels.

## Utilities

The thresholds for supplies and services contracts and light regime contracts for utilities are higher than those applying to the classical sector. As with the classical sector, however, the thresholds that apply to utilities are generally set every two years, and the current thresholds can be found on the European Commission's website: [www.simap.europa.eu](http://www.simap.europa.eu).

Most of the general principles outlined above apply equally to utilities, but the timing of the calculation of the estimated value is different. The time for estimating the value depends upon the way in which the procedure is launched. The relevant times are as follows:

- Qualification system: the date on which the selection commences;
- Periodic Indicative Notice: the date of dispatch of the contract notice to the OJEU;
- Other cases: the date on which the contract notice would be sent to the OJEU if the call for competition requirement applied and the contracting entity decided to satisfy the call for competition through such a contract notice.

Detailed provisions in the Utilities Directive<sup>4</sup> cover the way in which the value of a contract is calculated for specific types of contracts and specific situations, and some of these provisions are different from the rules applying in the classical sector. As in the classical sector, however, the main aims of the provisions relating to the calculation of the value of the contracts are to ensure that 1) a genuine and transparent pre-estimate of the value of the contract to be awarded has been made; and 2) the contracting entity does not attempt to avoid the application of the Utilities Directive, for example by splitting a requirement or a contract into smaller sub-threshold packages or contracts.

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<sup>4</sup> Directive 2014/25/EU on procurement by entities in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC, 26 February 2014.

## Further information

### Publications

SIGMA (2015), *Public Procurement Training Manual* - Module D5, OECD Publishing, Paris,

<http://www.sigmaweb.org/publications/public-procurement-training-manual.htm>