



STEEL INDUSTRY
GUIDANCE NOTES

Public contracts regulations

The European Union has issued a series of Procurement Directives which require Member States to promote fair and open competition for public contracts. The Public Sector Procurement Directive (2004/18/EU) which gives rules for the procurement of goods and services above certain threshold values by public authorities have been embodied into the following regulations:

- Public Contracts Regulations 2006 (England, Wales and Northern Ireland)
- Public Contracts Regulations 2006 (Scotland)

In a similar way the Utilities Directive (2004/17/EC) which gives rules for procurement in the utilities sector have been included in the following regulations:

- Utilities Contracts Regulations 2006

All three Regulations came into force on 31st January 2006.

This SIGNS looks at the application of the Public Contracts Regulations to construction work procured by public bodies and in particular design and construction standards that may be used.

To whom do the regulations apply?

Both the Public Contracts Regulations 2006 (England, Wales and Northern Ireland) and the Public Contract Regulations 2006 (Scotland) apply to all 'Contracting Authorities' which include all Central Government Departments, Regional bodies, Local Authorities and bodies governed by Public Law. A full list of the 'Contracting Authorities' is given in the Regulations.

The Utilities Contracts Regulations apply to operators in the water, electricity, gas, heat and transport sectors. They also cover exploration and extraction of oil and gas including coal and other solid fuel sectors. Again a full list of the utilities is given in the Regulations.

Contracting authorities and the Utilities are generally public bodies and it is these public bodies that must comply with the regulations. The regulations have no direct effect on private businesses. However, the regulations may have an indirect effect on those businesses that do work for the public sector, particularly where the financial limits thresholds are exceeded. There may also impinge on private businesses that are part of the supply chain for public body procurement as the technical specifications given in the regulations may be specified throughout the supply chain.

To which contracts do they apply?

The Public Contracts Regulations and the Utilities Contracts Regulations apply to contracts for supplies, services (including engineering services) or works (including demolition, construction, fit out and repairs of buildings and civil engineering structures) for sums above certain threshold values, placed by contracting authorities. The threshold values are revised every two years and can be found on the Office of Government Commerce web site (http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_eu_procurement_thresholds_.asp). The thresholds, net of VAT, applicable from 1st January 2010 for the Public Contracts

Regulations and the Utilities Contracts Regulations are given in Tables 1 and 2 below.

	Supplies	Services	Works
Entities listed in Schedule 1 of the Regulations	£101,323 (€125,000)	£101,323 (€125,000)	£3,927,260 (€4,845,000)
Other public sector contracting authorities	£156,442 (€193,000)	£156,442 (€193,000)	£3,927,260 (€4,845,000)

Table 1: Public Contracts Regulations - Threshold values from 1st January 2010

	Supplies	Services	Works
Threshold (Regulation 11)	£313,694 (€387,000)	£313,694 (€387,000)	£3,927,260 (€4,845,000)

Table 2: Utilities Contracts Regulations – Threshold values from 1st January 2010

How do the regulations relate to Technical Specifications?

Section 2 of each regulation gives the requirements for technical specifications to be used in contract documents. The following order of preference is given:

- British Standards transposing European standards;
- European technical approvals;
- Common technical specifications;
- International standards; or
- Other technical reference systems established by the European standardisation bodies

In the absence of these specifications reference may be made to the following technical specifications:

- British standards;

- ii) British technical approvals; or
- iii) British technical specifications relating to the design, calculation and execution of the work or works and use of the products

provided that each reference is accompanied by the words 'or equivalent'.

In each of the regulations the phrase 'or equivalent' applies to both lists of technical specifications.

The Eurocodes, published as BS ENs, are the primary source of technical specification for structural design. However, paragraph (10) states:

Where a contracting authority defines technical specifications as referred to in paragraph (6), it shall not reject an offer on the basis that materials, goods or services offered do not comply with those technical specifications if an economic operator proves to the satisfaction of the contracting authority by any appropriate means that the one or more solutions that economic operator proposes in its tender document satisfy the requirements of those technical specifications in an equivalent manner.

Can withdrawn British Standards be used?

The Building Regulations allow any method of safe design to be used while the Public Contract Regulations and the Utility Contracts Regulations establishes a hierarchy of technical specifications with the Eurocodes as the main technical specification. However both procurement regulations allow 'equivalent' technical specifications to be used. Unfortunately, the term 'equivalent' is not defined in the either the Public Contract Regulations or the Utility Contracts Regulations but it is clear from the previous question that the responsibility of demonstrating 'equivalence' lies with of the supplier or in the case of a structure the engineer. In the case of a structure equivalence could mean similar levels of reliability, safety or a combination of safety and economy.

The recently withdrawn British Standards can be shown to have similar levels or reliability/safety. The Partial Safety Factors and the other Nationally Determined Parameters (NDPs) given in the National Annexes that support the Eurocodes set the margins of safety for structures built in the UK. These partial safety factors were established by comparing the methods given in the Eurocodes with those given in the equivalent British Standards. The purpose of this exercise was to transfer the experience gain in using the existing national standards into the Eurocodes through the values adopted for the Partial Safety Factors and other NDPs in the National Annexes.

During the calibration process the following principles were

adopted as a compromise between the concerns of the European Commission, to maintain harmonisation, and the concerns of UK regulators and designers not to create too great a departure from existing UK practice:

- 1) The recommended Eurocode values should be adopted where the differences between the Eurocode values and UK derived values are small (i.e. less than 10%).
- 2) The recommended Eurocode values should be adopted where differences are more significant but where there are specified reasons to justify the difference for example the availability of new research data or evidence of successful overseas practice (this could result in the values adopted being higher or lower than UK practice)
- 3) Partial Safety Factors and other NDPs should only depart from the recommended values where neither of the above conditions is met

Withdrawn British Standards such as BS 5950 will, in general, give a similar level of safety, reliability and economy as the Eurocodes when used with their National Annexes. Therefore designers will still be able to use withdrawn British Standards, at least in the short to medium term, as 'equivalent' technical specification under both the Public Contracts Regulations and the Utility Contracts Regulations.

Does the Procurement Regulation cover payment terms?

No, but a considerable amount of work on payment has been undertaken by the Office of Government Commerce (now part of the Efficiency and Reform Group within the Cabinet Office) on fair payment in public sector projects.

This culminated in an information note issued last year reminding central government departments that a decision taken by the Construction Clients Board made it a contractual requirement in new central government contracts that payments down the supply chain must be made within a certain period of time from the due date in the main contract. For the wider public sector, these requirements are recommended best practice.

The requirements for payment are as follows:

Tier 1 (main contractor)
within 14 days of due date under the main contract

Tier 2 (sub-contractor)
within 19 days of the due date in the main contract

Tier 3 (sub-sub-contractor)
within 23 days of the due date in the main contract.

More information is set out in SIGNS SN53.

Key Points

1. The Public Safety Procurement Directive gives rules for the procurement of goods and services above certain threshold values by public authorities. These regulations have been incorporated in to regulations in England, Wales , Northern Ireland and Scotland which came in to force on 31st January 2006.
2. The regulations apply to all central government departments, regional bodies, local authorities and bodies governed by public law. A full list is given the each of the regulations.
3. The regulations apply to contracts above certain threshold values. These threshold values are revised every 2 years and can

be found on the Office of Government Commerce web site.

4. Section 2 of the regulations give the requirements for technical specifications. Each of these must be accompanied by the words 'or equivalent'.
5. Withdrawn British Standards may be used in the short term as 'equivalent' technical specifications.
6. An information note on payment terms was issued last year reminding central government departments that it is a contractual requirement in new central government contracts that payments down the supply chain must be made within a certain period of time from the due date in the main contract. Further information can be found in SIGNS SN53.

Further sources of Information

Office of Government Commerce

www.ogc.gov.uk

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'Making fair payment a contractual requirement for new central government contracts'