



# Support for Improvement in Governance and Management

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## Brief 5

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### Public Procurement

# Understanding the EU Financial Thresholds

#### CONTENTS

- Current thresholds
- When are financial thresholds set?
- What principles apply to the calculation of financial thresholds?
- Other rules applying to the calculation of the value of contracts
- Contracts below the EU financial thresholds
- Utilities

The Directive only applies to contracts of a specified type and of a value that meet or exceed the relevant EU financial threshold.

What are the current thresholds? The thresholds change on a regular basis, generally every two years.

For the period from 1 January 2010 to 31 December 2011 the basic thresholds for contracting authorities are EUR 4 845 000 for works and EUR 193 000 or 125 000 for supplies and services.

You can check the current financial thresholds on the Commission's website: [www.simap.europa.eu](http://www.simap.europa.eu)

These thresholds reflect the level at which it was assumed by the Community Legislator that cross-border trade was likely, although 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 being 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 understand which type of contracting authority they are and what they are purchasing in order to determine the correct threshold.

There are some quite complex provisions governing the calculation of the value of contracts. These provisions are different for works contracts and supply and service contracts.

There are also specific provisions covering 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. The amendments are made by means of European Commission Regulations. There are provisions allowing for the amendment of the financial thresholds at other times. The current financial thresholds can be found on the Commission's website: [www.simap.europa.eu](http://www.simap.europa.eu)

**General thresholds for works, supplies and services contracts:** These are not the only thresholds, but they are the thresholds 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 and (2) supplies and services contracts, the threshold for works contracts is far higher than the thresholds for supplies and services. For the period from 1 January 2010 to 31 December 2011 the basic thresholds for contracting authorities are EUR 4 845 000 for works and EUR 193 000 or 125 000 for supplies and services.

There are two different thresholds for supplies and services contracts. The lower threshold applies to most purchasing by public bodies subject to the GPA and the higher threshold applies to other contracting authorities not subject to the GPA.

**Other thresholds:** there are other specified thresholds for purchases in the field of defence, works concession contracts, subsidised works contracts, and contracts awarded by works concessionaires. There are additional thresholds applying to prior information notices which a contracting authority may opt to publish on an annual basis for supplies and services contracts and on a contract-specific basis for works contracts.

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

There are a number of general principles that apply to the calculation of the estimated value for 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) and 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 to deliberately avoid 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.

## Are there other rules applying to the calculation of the value of contracts?

In addition to these general principles there are important detailed rules applying to the calculation of the value of each type of contract and also on the calculation of the value of a contract in specified 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 (1) that there is a genuine and transparent pre-estimate of the value of the contract to be awarded, and (2) that 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, how to deal with contracts where the term or value may be uncertain and they 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'.

### Contracts below the EU financial thresholds

**The aggregation provisions:** The requirements for calculating whether contracts are of a value that signifies that they 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. This is because 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, they may be a type of contract that is not subject to those obligations or they are of low value and therefore do 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 – which help 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 specified 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 utilities are higher for supplies and services contract than those applying to the classical sector. As with the classical sector, the thresholds which apply to utilities are generally set every two years and the current thresholds can be found on the 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 when the contract notice would be sent to the OJEU if the call for competition requirement applied and the utility decided to satisfy the call for competition through such a contract notice.

There are detailed provisions covering the way in which the value of contracts is calculated for specific types of contract and specific situations and some of these vary from the rules applying in the classical sector. As in the classical sector the main aims of the provisions relating to the calculation of the value of the contracts are to ensure that there is a genuine and transparent pre-estimate of the value of the contract to be awarded, and that the contracting entity 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.

### Further reading:

[SIGMA Public Procurement Training Manual](#)