

## New thresholds for application of public procurement rules

With effect from 1 January 2002, new conversion figures apply for the thresholds which determine whether or not contracts placed by UK operators are subject to the Utilities Contracts Regulations 1996 ("the Regulations"). The Regulations implement EU rules on public procurement and so similar rules exist throughout the EU and the European Economic Area (EEA). (The EEA consists of the 15 EU Member States plus Norway, Iceland and Liechtenstein). They apply to state-owned companies and entities operating on the basis of special or exclusive rights granted by the state – this includes holders of licences to exploit oil and gas. (The rules also apply to utilities involved in provision of gas, electricity, water and telecommunications). The Regulations do not apply to suppliers unless they are acting as agent for an operator.

The Commission publishes fixed conversion values for the euro thresholds every two years to provide a degree of certainty for utilities subject to the Regulations - however, as a result of the weakness of the euro as against sterling over the last couple of years the new sterling thresholds are somewhat lower than the previous values. The relevant values for the oil and gas industry are set out in the table below - other thresholds are in use in other sectors.

Category	Threshold	Old conversion amount (sterling)	New conversion amount (sterling)	New conversion amount (Danish krone)	New conversion amount (Swedish krone)	New conversion amount (Norwegian krone)
Works contracts	5 million euros	£3,370,000	£3,093,491	37,259,536	43,534,080	40,589,000
Supply contracts	400,000 euros	£269,600	£247,479	2,980,763	3,482,726	3,247,120
Services contracts	400,000 euros	£269,600	£247,479	2,980,763	3,482,726	3,247,120

Under the Regulations, contracts falling into the above categories and with a value above the relevant thresholds are subject to special rules to ensure that they are effectively open to competition from suppliers throughout the EU and EEA. The rules involve advertising contracts in the Official Journal and awarding them in accordance with specified procedures.

The oil and gas sector in the UK benefits from a Commission decision of 1997 - known as a derogation - exempting it from the full rigour of the rules. Other states with similar derogations are the Netherlands and Norway. Where a derogation applies, the detailed rules need not be followed but the operator must still:

- Observe principles of non-discrimination and competitive procurement;
- Hold a competition unless it can objectively justify not doing so;
- Make decisions objectively on the basis of relevant criteria when for instance providing information to potential suppliers, operating qualification systems, selecting providers to tender and negotiating or awarding contracts;
- In some cases, supply information to the Commission about contract awards.

There are no fines for failure to comply with the Regulations but contractors can stop the tender process if there has been a breach or, if the contract has already been awarded, claim damages.

For more information about the application of the Regulations please contact Judith Aldersey-Williams in our Aberdeen office (by e-mail on [judith.aldersey-williams@cmck.com](mailto:judith.aldersey-williams@cmck.com) or on +44 (0)1224 622002) or Sue Hankey in our London office (by e-mail on [sue.hankey@cmck.com](mailto:sue.hankey@cmck.com) or on +44 (0)20 7367 2960).