



National Health Service in Scotland  
Management Executive

St. Andrew's House  
Edinburgh EH1 3DG

Dear Colleague

**PROCUREMENT OF INFORMATION SYSTEMS AND SERVICES**

**Summary**

1. This letter reminds Health Boards and NHS Trusts of their obligations as EC/GATT bodies for the implementation of public procurement legislation.

The requirements are:-

- (a) compliance with current EC/GATT public procurement legislation and agreements;
- (b) compliance with best procurement practice in value for money terms.

These are covered in detail in the Annex to this circular

**Action**

2. Boards and Trusts are advised to seek DIS(HSD) guidance and advice on the application of these regulations in the field of Information Management and Technology (IM&T) goods and services (including telecommunications) before commencing procurement. The regulations are complex and in some areas guidance is not yet fully developed. Health Boards and NHS Trusts are asked to err on the side of caution when considering whether to seek such advice.
3. Boards and Trusts should include within their Information Strategies statements confirming their compliance with current EC/GATT public procurement legislation and agreements.
4. Boards and Trusts should nominate a key contact point for Information Management and Technology (IM&T) procurement matters and notify the name to

20 August 1993

Circular SHHD/DGM

is cancelled

Addressees

For action:  
General Managers,  
Health Boards

General Manager,  
Common Services Agency

General Manager, State  
Hospital

Chief Executives  
NHS Trusts

For information

General Manager,  
Health Education Board  
for Scotland

To be copied to Unit  
General Managers

Enquiries to:

Mrs Karen Bowman  
Head of Procurement  
DIS/HSD  
Keith House  
South Gyle  
EDINBURGH  
EH12 9DQ

Tel: 031-317-7577  
Fax: 031-317-7467

Karen Bowman, Head of Procurement, Directorate of Information Services, HSD, Keith House, South Gyle, Edinburgh, EH12 9DQ by 28th August 1993.

5. Boards and Trusts should ensure that the key contact point is aware of all potential IM&T procurements and that guidance from HSD is provided to all relevant personnel.

#### Background

6. General Managers of Health Boards and of the Common Services Agency and Chief Executives of NHS Trusts are responsible to the Chief Executive for implementing public procurement regulations.
7. The NHS is subject to EC and GATT legislation and regulations and failure to comply with the regulations can, in certain circumstances, expose NHS bodies to legal action by aggrieved suppliers.
8. The objectives of the regulations are to ensure open and fair competition between potential suppliers/service providers across the EC for public sector business.

The broad principles include:-

- . non-discrimination on grounds of nationality;
- . stating requirements in terms of European Standards, where they exist;
- . not referring to a specific make, source or process ie. not using "brand" names;
- . only selecting suppliers/service providers on the basis of published evaluation criteria;
- . not giving individual suppliers advance information;
- . advertising all requirements over certain thresholds in the Official Journal of the European Community;
- . not splitting up requirements in order to avoid the thresholds;
- . debriefing unsuccessful suppliers.

The requirements of these regulations are further described in Annex 1 but only the original text of the legislation listed in para 8 below should be taken as definitive.


9. The current public procurement regulations are primarily embodied in:-
  - . The GATT Government Purchasing Agreement;
  - . The Public Supply Contracts Regulations (S.I.1991/2679);

. The EC IT Standards Decision (87/95/EEC)

. The EC Services Directive (92/50/EEC)  
effective 1st July 1993

10. Interpretation of these regulations for the specialised field of IM&T and related services for the NHS in Scotland is charged to the Directorate of Information Services Health Systems Division is developing standards for procurement and will provide advice and guidance to sub-accounting officers and their staff, taking account of the latest guidance on best practice and advice from the CCTA and HM Treasury.

Yours sincerely



**C B Knox**  
**Director of Information Services**

### Procurement Strategy

Boards, Units and Trusts must state in their Information Strategy that procurements will comply with the legal and other public procurement requirements incumbent upon them as an EC/GATT body.

This will include conformance with the current UK, EC and GATT public procurement legislation and agreements and having a strategy to adopt new laws and regulations as they are enacted or agreed.

The main current legislative areas are taken in from para 8.

### Principles of Procurement

The procurement method adopted should enable compliance to be demonstrated and audited and if necessary defended against any challenge of non-compliance in the Court of Session.

Boards, Units and Trusts should take account of their own Standing Financial Instructions but also apply the principles of EC/GATT public sector purchasing requirements irrespective of the value of the IS/IT project and whether it is for purchase, lease or facilities management, namely:-

- . **open and fair competition**

- ie. do not give advance information to any supplier and do not specify supplier-specific products or services, or processes: do not specify by nationality;

- . **application of technical standards**

- ie. use European Standards, International Standards then British Standards in order of preference and use derogation from standards if applying "other" standards;

- . **application of stated evaluation criteria**

- ie. state objective criteria in initial contract document (eg. Operational Requirement or Invitation to Tender) and use only those stated criteria applied in a fair and consistent manner to reject/select bids;

- . **advisers should not be bidders**

- ie. do not use a firm to advise on strategy or specification of requirements who may have an interest in bidding against those requirements;

- . **advertise all requirements above EC/GATT thresholds**

Boards, Units and Trusts must not try to split up projects to avoid EC/GATT thresholds. Estimated value of a project for the thresholds should include all options and items

whether to be sourced from the procurement itself or elsewhere (eg. from existing Framework Agreements) including four years (48 months) services charges eg. for maintenance and support.

### Procurement Method

Specification of requirements should be clear, concise and unambiguous and be expressed in terms of business needs to meet the local strategy rather than in terms of supplier solutions and must adhere to the EC/GATT principles referred to above. Technical standards should be referenced in the appropriate way in accordance with the DIS Information Management Policies.

Boards, Units and Trusts are strongly recommended to follow the HSD Procurement Method and use the standards for procurement project control, model documents and work instructions issued by the HSD Procurement Section. These have been developed over several years of experience and are reviewed on an on-going basis in the light of the latest advice from the CCTA and other relevant bodies. Procurement using this method has been approved as compliant by the CCTA and external assessors. Full publication of the method is in the final stages of preparation.

The method includes the use of standard Conditions of Contract which are issued with the specification of requirement. The first of these has been reviewed by the Central Legal Office and it is DIS policy that Boards Units and Trusts should base System procurement contracts on the model (ref. SNCPA v2.2 or later).

Other models for licences, consultancy etc are being reviewed and new versions will follow. It also recommends agreeing "Draft Framework Arrangement" rather than "Memorandum of Specification" with each of the remaining competing suppliers before final Invitation to Tender for all but the least significant procurements.

Boards, Units and Trust are advised to procure information goods and services on the basis of the most economically advantageous offer to ensure that the quality of the proposed solution (against the stated evaluation criteria) is taken into account when considering best value for money rather than simply the price.

Whole life cost analysis including Treasury discounting techniques should be used when comparing prices bid and local Standing Financial Instructions and guidance on leasing or facilities management should be taken into account if these options are being considered.

Unsuccessful suppliers should be given the opportunity of 'debriefing' as to the reasons for rejection without breaching commercial ethics. This will enable future bids to the NHS in Scotland and other public bodies to be improved.

Detailed advice and assistance on all these aspects of Information goods and services procurement should be sought from HSD Procurement Section to ensure the most up-to-date guidance on best practice is taken into account.

## Planning for Procurement

In preparing their three year rolling plans, Boards, Units and Trusts need to resource their procurement requirements in terms of timescales (taking account of legislative requirements and procurement method advice). You should consider the need for project management, user input, procurement expertise and management resources and should take into account wherever relevant the benefits of synergy and economics of scale by joint collaborative purchasing with other NHS in Scotland bodies. In reviewing these plans DIS may be able to assist in identifying potential collaborators and advise on an EC/GATT conformant procurement.

## Central Procurement

Certain strategic procurements carried out by HSD on behalf of the NHS in Scotland and will usually result in a Framework Agreement from which participating bodies can purchase without further EC/GATT activities. To take account of recent advice in this area, commitment may be sought by HSD from Boards, Units and Trusts prior to final award of Framework Agreements and bodies should be ready to give such commitment as timeously as possible as these will be mostly requested for existing priority areas.

## Thresholds

The current thresholds are:-

up to 100,000 ecu (£66,270): must not prejudice EC/GATT principles;

between 100,000 ecu (£66,270) and 134,000 ecu (£88,802) must apply EC IT standards decision;

134,000 ecu (£88,802) and above apply Public Supply Contracts Regulations 1991;

200,000 ecu (£141,432) and above apply Public Services Contracts Regulations 1993;

annual expenditure of 750,000 ecu (£530,366) or above publish annual Indicative Notice in OJEC.

## NOTES

1. Thresholds above are expressed in ecus: European Currency Units £ sterling equivalent recalculated every two years (next due January 1994);
2. Requirements are cumulative ie. all procurements must not prejudice EC/GATT principles and those above the higher threshold must also apply the EC IT Standards Decision;
3. The annual Indicative Notice is further described in the Public Services and Public Supply Contracts Regulations;
4. The relative value of "goods" and "services" will determine which Regulations apply;
5. OJEC is the Official Journal of the European Communities.