



THE SCOTTISH OFFICE

NHS
MEL(1994)17

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 replaces the Annex 1 to MEL(1993)106.
2. Legal advice of what may be excluded from the value of a project when deciding whether the project falls above or below EC/GATT thresholds has added to the guidance contained in the Annex. The revised thresholds intimated in MEL(1994)1 have been taken into account.
3. Substantive changes to the Annex will be dealt with by re-issue. Changes will be sidelined and the date of issue indicated at the foot of each page.

Action

4. Boards and NHS Trusts who have not yet nominated a key contact point for procurement matters related to information projects, as requested at para 4 of MEL(1993)106 should do so now.
5. The revised Annex should be passed to the key contact point and copied to managers responsible for procurement, and any other recipients of MEL(1993)106.

Yours sincerely

C B KNOX
Director of Information Services

4 March 1994

Circular MEL(1993)106 is cancelled

Addressees

For action:

General Managers,
Health Boards

General Manager,
Common Services Agency

General Manager, State
Hospital

Chief Executives,
Trusts

Chief Executives
Designate

For information:

General Manager,
Health Education Board
for Scotland

To be copied to Unit
General Managers

Enquiries to:

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ANNEX 1

PROCUREMENT OF INFORMATION SYSTEMS AND SERVICES

1. Procurement Strategy

1.1 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.

1.2 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.

1.3 The main current legislative areas are:-

- The GATT Government Purchasing Agreement;
- The Public Supply Contracts Regulations (S.I.1991/2679);
- The EC IT Standards Decision (87/95/EEC);
- The Public Services Contracts Regulations (S.I.1993/3228).
effective 1 July 1993

2. Principles of Procurement

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

2.2 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 of facilities management, namely:-

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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;

(c) - **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;

(d) - **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;

(e) - **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 including 4 years (48 months) services charges eg for maintenance and support (the estimated value need not include, however, the value of items or services which may be procured, when appropriate from existing EC/GATT Framework Agreements).

3. Procurement Method

3.1 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 EG/GATT principles referred to above. Technical standards should be referenced in the appropriate way in accordance with the DIS Information Management Policies and Standards (IMPS).

3.2 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.

3.3 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).

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

3.5 Boards, Units and Trusts 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.

3.6 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.

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

3.8 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.

4. Planning for Procurement

4.1 In preparing their 3 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.

5. Central Procurement

5.1 Certain strategic procurements are 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.

6. Thresholds

6.1 The current thresholds are:-

up to 100,000 ecu (£74,864):

must not prejudice
EC/GATT principles;

between 100,000 ecu (£74,864)
and 134,000 ecu (£96,403):

must apply EC IT
Standards Decision;

134,000 ecu (£96,403) and above:

apply Public Supply
Contracts Regulations
1991;

200,000 ecu (£149,728) and above:	apply Public Services Contracts Regulations 1993;
annual expenditure of 750,000 ecu (£561,480) or above:	Publish annual indicative Notice in OJEC.

6.2 NOTES

1. Thresholds above are expressed in ecus: European Currency Units £ sterling equivalent recalculated every 2 years (see MEL(1994)1 Annex B);

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:-

Hardware, peripherals, comms equipment, cabling and "off-the-shelf" software, software licence to use (over 48 months) are classed as "goods".

Bespoke software development, implementation, training and consultancy services, maintenance and support (over 48 months) are classed as "services".

Total project value over 48 months should be calculated as described in para 2.2 (e) above. However if project value is between the Supplies and Services thresholds then specific advice should be sought from HSD Procurement.

5. OJEC is the Official Journal of the European Communities.