



NHS Management Executive  
St. Andrew's House  
Edinburgh EH1 3DG  
6th February 1998

Dear Colleague

**EC PUBLIC PROCUREMENT: EQUAL TREATMENT IN THE SELECTION OF TENDERERS**

**REVISION OF THRESHOLDS FOR THE WORLD TRADE ORGANISATION (WTO) AGREEMENT ON GOVERNMENT PROCUREMENT (EC DIRECTIVE 80/767), EC SUPPLIES DIRECTIVE (93/36), EC WORKS DIRECTIVE (93/37) AND EC SERVICES DIRECTIVE (92/50)**

**Summary**

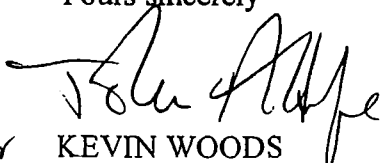
1. This letter is to inform Health Boards, NHS Trusts and other bodies of the guidance note issued by HM Treasury on Equal Treatment in the Selection of Tenderers and the revised thresholds for the advertising of contracts as required by the EC Supplies, Works and Services Directives and the WTO Agreement on Government Procurement. The revised thresholds supersede those listed in NHS: MEL(1996)50.

**Action**

2. Attached at Annex A is a copy of the guidance on the Equal Treatment in the Selection of Tenderers. General Managers and Chief Executives are asked to draw this to the attention of those responsible for all forms of procurement subject to EC rules.

3. Attached at Annex B is a table of the revised thresholds, which took effect from 1 January 1998. Health bodies, including NHS Trusts, must abide by the requirements of the EC Directives and the WTO agreement. Chief Executives and General Managers will wish to inform their staff accordingly.

Yours sincerely

*for*   
KEVIN WOODS  
Director of Strategy and Performance  
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Date	Price

**Addressees**

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**EC PUBLIC PROCUREMENT:  
EQUAL TREATMENT IN THE SELECTION OF TENDERERS**

**Note by the Procurement Policy Unit**

**Object:** To provide guidance on the application of the EC rules on public procurement.

2. General guidance on the application of the EC rules, as implemented by the Supplies, Works, Services and Utilities Contracts Regulations, is available from the Treasury Publications Unit - "An Introduction to the EC Public Procurement Rules". This note, however, addresses a specific point which has arisen in the context of an infraction case. The case concerns a contract award procedure subject to the Utilities Regulations but the principle involved is common to all contract award procedures involving the selection of tenderers.

3. What happened was that, for business reasons, the award procedure was suspended for twelve months or so having reached the point at which tenderers had been selected but the invitation to tender had not been issued. When the award procedure was resumed the selection process was re-run, taking into account the recent track record of candidates who had worked for the contracting entity in the meantime. These and other candidates, however, were not given an opportunity to provide information about their recent contracts for other clients. One complained and, in responding to the Commission, we were able to offer reassurance that there had not been any discrimination in practice. We had to agree, however, that the award procedure had been conducted in such a way as to have had the potential to discriminate between the candidates because they were not given an equal opportunity to provide evidence of their current technical capacity.

4. This case highlights the importance which the Commission attaches to the principle of equal treatment. This principle was established by the European Court of Justice in the "Storebaelt" case (Case C-243/89, Judgement of 22 June 1993). Essentially, the Court held that in inviting tenders on the basis of certain conditions and then proceeding to accept a tender which did not conform to those conditions, Storebaelt had acted in breach of the principle of equality of treatment since other tenderers had been denied the opportunity to submit tenders on a like basis. The Court held that, although the Directive (in this case the Works Directive (71/305/EEC)) made no express mention of the principle of equal treatment, "the duty to observe that principle lies at the very heart of the Directive".

5. The acid test to be applied in contract award procedure subject to the directives is whether a proposed action could have the effect of discriminating between candidates or tenderers or against any other person who might have wished to express an interest. If so, complementary action will be needed to ensure a level playing field.

**Procurement Policy Unit**  
**HM Treasury & DTI**  
**November 1997**

**REVISION OF EC AND WTO PUBLIC PROCUREMENT THRESHOLDS**

The national currency equivalents of the Supplies, Services and Works Directives and the WTO Agreement on Government Procurement have been revised with effect from 1 January 1998. The revised rates which will run until 31 December 1999 are as follows:

**Supplies Contracts**

	<u>To 31.12.97</u>	<u>From 1.1.98</u>
	£	£
Contracts	108,667	104,435
Indicative Notices	592,568	584,901

**Works Contracts**

	<u>To 31.12.97</u>	<u>From 1.1.98</u>
All Contracting Authorities	3,950,456	4,016,744 *
Small Lots Provision	790,091	779,867

**Services Contracts**

	<u>To 31.12.97</u>	<u>From 1.1.98</u>
Part A services other than R & D	108,667	104,435 #
Part B services and R & D	158,018	155,973 #
Small Lots Provision	63,207	62,389
Indicative Notices	592,568	584,901

(Note: Health Boards, NHS Trusts, CSA Divisions and other NHS bodies are all WTO entities.)

\* With the exception of subsidised works contracts under regulation 23 of the Public Works Contracts Regulations 1991 which have a threshold of £3,899,337.

# The categories of the services which fall within Part A and Part B are detailed in Schedule 1 to the Public Services Contracts Regulations 1993.