

PUBLIC PROCUREMENT

What is public procurement?

“Public procurement” is the process by which public authorities, such as ministries or local authorities, purchase goods or services or enter contracts for works to be carried out. This can range from buying photocopiers or leasing a van to the construction of a bridge or an airport.

Why is public procurement regulated at EEA level?

The two main objectives of the EEA rules on public procurement are:

- to ensure that public funds are spent in the most effective manner, according to the principle of “best value for money”, and
- to enhance cross-border competition for public contracts in the EEA, creating business opportunities for enterprises and contributing to economic growth and job creation.

If there are a large number of suppliers interested in a contract, it is likely that the cost will be lower due to the higher level of competition. A contracting authority will thus receive better value for money, and less taxpayer money will be spent on a given project. The public sector is the biggest single spender in the EEA, with public expenditure on goods, works, and services representing approximately 14% of EEA GDP. The stakes and opportunities involved are thus enormous, both from the point of view of the taxpayer and for businesses. In order to ensure that the public sector can choose from the widest possible range and the best offers, EEA law seeks to create a level playing field for all economic operators, permitting businesses from across the EEA to participate in public tenders.

The transparency required by the EEA public procurement rules also serves as a potent deterrent to any form of corruption.

What EEA rules do national authorities have to comply with when conducting public procurement?

The principal aim of the procedures is to guarantee transparency and equal treatment of all potential suppliers in the EEA and permitting them equal access to public contracts in other EEA countries. As a rule, such contracts are announced in the [Tender Electronic Daily](#) (TED). For the purpose of such announcements, which must be equally intelligible to potential tenderers irrespective of the language they operate in, a single numerical classification system (so-called “CPV codes”) has been introduced to standardise the references used to describe the subject of procurement contracts.

The public procurement rules distinguish between two sectors; the “classic sector” which refers to all sectors except those that are explicitly excluded, and the “utilities sector” which covers water, energy, transport, and postal services. The classic sector is regulated by [Directive 2004/18/EC](#). The utilities sector is regulated by [Directive 2004/17/EC](#), which provide similar rules to those applicable to the classic sector. There are, however, some important differences, such as the possibility of granting an exclusion from the application of the latter Directive if, in the state concerned, there is unrestricted access and full competition in the market.

An important general limitation to note is that there is a value threshold below which EEA rules do not apply. As contracts will only be of potential interest for economic operators in other EEA countries if they exceed a certain value, EEA law is applicable only to more substantial purchases by public authorities. For example, it is unlikely that a German road building company would be interested in repairing a short stretch of road in a remote part of Iceland. On the other hand, the same company might well be interested in a multi-million Euro contract for building a tunnel, even if it is far away from its normal centre of activities. The currently applicable thresholds as of 6 February 2016, above which it is presumed that there will potentially be an interest from companies in other EEA countries, vary depending on the type of contract in issue between 135 000 and 5 225 000 euro.

What is ESA’s role?

ESA monitors the EFTA States in order to ensure that legal acts that have been made part of the EEA Agreement are effectively implemented into domestic law.

Where ESA has information about any domestic legislation or practice that may not comply with EEA law, it can decide to initiate an investigation. This may be based on incorrect implementation of EEA rules or where other domestic laws or practices are incompatible with EEA law. Such investigations can be initiated on the basis of ESA’s own surveillance of the EFTA States, or on the basis of a [complaint](#). Anyone may submit a complaint to ESA against any EFTA State that has failed to comply with its obligations under the EEA Agreement.

As the adverse effects arising from an infringement of the EEA procurement rules subsist throughout the entire performance of the contract, it is ESA’s policy to pursue cases as long as the contract concerned continues to produce effects and the EFTA State concerned has not taken suitable corrective measures to rectify the breach.

Examples of recent investigations include:

- Complaint against Norway regarding discrimination of private enterprises and a possible breach of public procurement rules ([Request for information](#))
- Exemption of the exploration and the extraction of crude oil and natural gas on the Norwegian Continental Shelf from the application of Directive 2004/17/EC (College Decision [178/13/COL](#))

Further information

Information about European public procurement: <http://simap.ted.europa.eu>