

UNITED KINGDOM

KEY FACTS AND FIGURES

Key Facts and Figures in United Kingdom						
Overview	Total procurement 274,600,000,000€		Procurement % GDP 14%		2013 GDP 2,017,193,800,000€	Contracting authorities 5,000
Procedures applied	Open 45%	Restricted 37%	Negotiated procedure with call 8% no call 2%		Competitive dialogue 2%	Direct award 4% Other 1%
Share of contract notices by buyer	National 13%		Regional/local 38%		Body governed by public law 34%	Other 14%
Contract type	Services 62%		Works 9%		Supplies 30%	Framework agreement 43%
Ex ante conditionality criteria as of 2014	EU rules Fully met		Transparency Fully met		Training Fully met	Admin. capacity Fully met
E-procurement adoption	E-notification Voluntary		E-access Voluntary		E-submission Voluntary	Uptake rate 31%
Perceived corruption	Corruption widespread in society			Corruption widespread in procurement		
	Businesses 46%		Individuals 64%		At national level 38%	At local/regional level 37%
TED indicators	Value of tenders 90,349,740,982€		Of total procurement 33%		# contract notices 10,159	# contract awards 7,681
Other indicators	Received single bid 10%		# days for decision 83.6		Price only criteria 7%	MEAT criteria 93%
	Won by foreign firms 2%		Related to EU funds 13%		Joint purchase 21%	Central purchasing Yes, CCS

For more detailed descriptions and links to sources for the above data, please see Section 4 of the report

Summary of public procurement system

Procurement in the UK is unique in the EU in three ways: it is the largest in value EU-wide, makes the greatest use of restricted procedures and competitive dialogue, and is regulated by two different legal systems. According to national statistics, the UK procurement system spends approximately EUR 316 billionⁱ annually, making it the largest in the EU by value. However, only a relatively small portion of this is ESI funds and therefore the procurement of EU projects cannot be considered representative of the overall procurement system in place in the UK.

The UK's high use of restricted procedures makes it an outlier as it is the only MS in which open procedures are not used for the majority of contracts. This is made even more notable by the fact that elsewhere in the EU, the use of restricted tenders is in decline. UK public bodies favour restricted procedures because they limit the number of tenderers per contract, thus reducing the cost of evaluating bids, as well as the cost of bidding for the candidates. However, the two-stage tendering process takes longer than an open procedure, and can be more restrictive for potential suppliers to comply with, due to the quality of tender submissions requiredⁱⁱ.

The UK's administrative structure also impacts its procurement system, with unique legal regimes for England, Wales and Northern Ireland on the one hand, and Scotland on the other one. Implementation of procurement is even more decentralised, with national institutions in Wales and Northern Ireland as well.

Like many MS, the UK procurement system is currently undergoing a wave of reforms, the second to be launched in the past five years. The goal of these reforms is to increase standardisation and centralisation of procurement at the UK level, and to improve capacity at all levels.

DESCRIPTION OF FEATURES

Legal features of public procurement system

The UK's legal framework means that procurement is governed by two sets of laws. In England, Northern Ireland and Wales, EU Directive 2004/18/EC is transposed as Public Contracts Regulations 2006, and 2004/17/EC as Utilities Contracts Regulations 2006. In Scotland, the same laws are transcribed as Public Contracts (Scotland) Regulations 2006 and Utilities Contracts (Scotland) Regulations 2006. Below the EU thresholds there is no specific law covering public procurement in the UK, but EU Treaty principles still apply.

The UK has also expressed an interest in transposing the 2014 EU Directives as soon as possible in order to "take advantage of new flexibilities."ⁱⁱⁱ Directive 2014/24/EU on public procurement, as well as a number of national reforms designed to make public procurement more accessible to small businesses^{iv}, have already gone into effect as part of Public Contracts Regulation 2015, and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport, and postal services sectors came into force in the summer 2015. The implementing legislation for Directive 2014/23/EU on the award of concession contracts will come into force by April 2016, in time to meet the deadline for transcription in national law^v.

Institutional system

The primary procurement institution for England, Wales and N. Ireland is the Efficiency and Reform Group (ERG), which is responsible for improving operational efficiency government-wide. ERG plays several roles, including in transposing EU Directives, handling infraction cases, supervising procurement activity for value, and providing guidance and training for contracting authorities. However, the obligations and liabilities on specific procurement procedures remain with the contracting authority. In Scotland, the Scottish Procurement and Commercial Directorate (SPD) plays a comparable role^{vi}. Contracting authorities, on the other hand, bear the liability for the fulfilment of obligations related to public procurement procedures.

The Crown Commercial Service (CCS) acts as one of the central purchasing bodies, and is designed to increase UK's value for money by aggregating purchasing power, providing advice and support to other government departments, and having the lead on procurement policy on behalf of the UK government. Efforts by the CCS's predecessor agency, the Government Procurement Service, generated EUR 4.26 billion in savings in 2013. In addition to the CCS, several administrations are acting as central purchasing bodies at regional and local levels.

While technically not part of the expenditure cycle, the independent National Audit Office (NAO) performs an important role in the procurement system. Specifically, it carries out oversight activity focused on verifying value for money. Although the NAO does not publish annual reports, their findings are reported to Parliament, which can in turn be used to hold government departments to account. The Audit Commission has traditionally performed these functions at local level, but pursuant to a 2014 law, these duties will be devolved to a private company, and their findings will be published by the NAO.

Suppliers can bring proceedings against contracting authorities in the High Court of England, Wales and Northern Ireland, or the Court of Session or Sherriff Court in Scotland, which are empowered to award damages or other penalties, issue injunctions, or invalidate unlawfully taken decisions. Their rulings can be appealed in the Civil Division of the Court of Appeal, and ultimately in the Supreme Court of the UK^{vii}.

In addition, during the 2007-2013 programming period, procurement carried out with ESI Funds was audited by three multi-fund Audit Authorities; two Audit Authorities dedicated to the ERDF, and one Audit Authority dedicated to the ESF^{viii}. For the current programming period, ESI Funds Audit Authorities have been reorganised to one per nation, namely the Cross Departmental Internal Audit Service (XDIAS) for England, the European Funds Audit Team of the Welsh Government, the Internal Audit Division of the Scottish Government and the Department of Enterprise, Trade and Investment (DETI) of Northern Ireland.

Key issues that have a bearing on administrative capacity

Human resources: In recent years, the UK's procurement workforce has experienced two cross-cutting trends. On the one hand, the austerity policy put in place in the aftermath of the economic crisis has resulted in significant headcount reduction across government agencies, including in their procurement departments. Between 2010 and 2012, the number fell 17% from approximately 3,900 to 3,200, although over the same period, the number of staff holding Chartered Institute of Purchasing and Supply (CIPS) qualifications has increased.

At the same time, the move toward greater centralisation in the CCS is increasing the professionalisation of procurement. In 2014, CCS had a staff of more than 750.

Structures: The ERG and CCS share responsibility for building the capacity of procurement practitioners in the UK. While CCS is primarily responsible for skill building through training, ERG provides policy guides, sample tender documents and other guidance materials. Most notably, they put out regular Procurement Policy Notes explaining official government policy, best practices and regulatory and procedural updates. There is also a telephone help line available to purchasers with questions on the application of the Notes.

Outsourcing of the legal review of the procurement processes to private law firms is a common practice in the UK. Law firms provide advice on procurement strategy and procurement law both to contracting authorities and economic operators in different stages of complex procurement processes.

Training: The government's overall procurement training programme is laid out in the Commercial Skills and Competency Framework, a detailed schedule of competencies required of procurement professionals at different stages in their careers and the trainings and certifications available to fulfil these requirements.

The CCS provides the training coursework under the framework that is specific to procurement. The curriculum offers no less than eight one-day courses, given annually in London, Birmingham and Manchester, on topics including systems and procedures, negotiating, and EU procurement rules. The courses are free of charge to central government employees, but individuals must pay their own travel and accommodations^{ix}.

CCS also offers an e-learning module and specific training on the use of lean sourcing methods in procurement^{ix}. The overall aim contemplated by the government in this training is to reduce the time from the contract notice to the contract award.

Systems/tools: One tool for improving efficiency involves promoting standardisation of procurement procedures at all levels of government. To that end, ERG publishes standardised templates that can be used by UK contracting agencies for general goods and services contracts, in addition to regular guidance and reports on procurement policy for contracting agencies and beneficiaries alike.

Another tool is the application of the LEAN management approach to the procurement system, which emphasises streamlined, standardised processes in order to shorten the

time lag from publication to award to 95 days. In order to achieve this goal, the government invested substantially in reforming its procedures, such as by reducing the length of pre-qualification questionnaires (PQQs), and investing in training staff across agencies and ministries. As a result, the 95-day goal has been met^x.

E-procurement

The UK is an EU leader in e-procurement with one of the highest uptake rates of any MS, despite the fact that neither e-notification nor e-submission is mandatory. More than 50% of all contracts are currently published online, with the exception of sensitive military contracts. Estimates of the levels of e-submission uptake place the UK in the range between 50% and 75%, with approximately 75% of central government bodies carrying out procurement fully electronically^{xi}. The Government procurement portal includes a searchable database of contract notices called Contracts Finder, as well as a pipeline to allow potential bidders to prepare for up-coming procurements. It also hosts a Spend Analysis Tool with regularly updated information on procurement organised by category and supplier.

In addition to the UK-wide site, there are the Public Contracts Scotland, Sell2Wales and eSourcing NI sites providing similar data for Scotland, Wales and Northern Ireland respectively.

Corruption

The degree of corruption and fraud in the UK's procurement system is relatively low by EU standards. Annual losses deriving from procurement fraud, including bribes and kickbacks, are estimated at EUR 3.17 billion annually or less than 1% of total procurement expenditure^{xii}. However, because procurement is identified as a key potential loss area, it remains a target for anti-corruption and anti-fraud efforts.

The most recent UK Anti-Corruption Plan published in December 2014 gives an overview of the measures taken by the government to avoid corruption from spreading in the public sector^{xiii}. The primary tools in the fight against corruption are the transparency efforts being made, such as publishing all tenders of significant value, and the sanctions imposed on fraudulent suppliers including exclusion of individuals or businesses that have been convicted of fraud, bribery or corruption from procurement contracts.

Europe 2020 Agenda

The use of procurement to promote environmental, innovation and social priorities consistent with the Europe 2020 Strategy is quite advanced in the UK. In the area of green procurement, government buying standards for sustainable procurement in contracts have been instituted as best practices for all contracts and are mandatory for selected product groups. These standards take into account energy and water use, carbon footprint, resource efficiency, and life-cycle costs in order to set minimum standards of sustainability for government purchases.

Promoting access to government contracts for SMEs is another priority, and the UK has set a goal of 25% of all procurement awarded to SMES by 2015. In order to promote this goal, the government seeks to remove barriers to SME access by eliminating PQQs on smaller-value contracts, standardising them for larger ones, mandating prompt payments to make government contracts more economically viable for smaller firms with tighter cash flow needs, and appointing SME advocates to the CCSⁱ. The Small Business Research Initiative (SBRI)^{xiv} is another tool for promoting SME access to government contracts by encouraging pre-commercial procurement to drive innovation and to address future challenges^{xv}.

Finally, with regard to social issues, the UK passed legislation called the Public Services (Social Value) Act 2012, requiring contracting authorities in England and Wales to consider the economic, social, and environmental impact of services procurement on the community. Works contracts are exempt. Northern Ireland has taken its own steps towards promoting social goals via procurement by integrating gender equality and equal opportunities into the application/procurement process.

Irregularities and findings of National Audit Authorities

Because the NAO is accountable exclusively to Parliament, it does not make its annual findings available to the public directly, although it did issue a report on Improving Government Procurement in 2013 that includes some of their conclusions. Specifically, the NAO notes that the then ongoing reform strategy has the potential to achieve significant savings, but faces a number of challenges including quality and consistency of data collected, and reported lack of accountability between agencies and the central purchasing body GPS, inconsistent contract management across categories of goods, and the quality of customer service^{xvi}.

The Mystery Shopper Programme, through which small businesses can report on their experiences with government and any issues they encounter therein, is another channel through which irregularities in the procurement system can be tracked. The most recent reports highlight a number of problems, including the length and complexity of PQQs, the design of framework agreements or the fact that authorities did not provide sufficient advance warning on the opportunity to form a consortium^{xvii}.

Auditors from the EC and ECA have detected a number of irregularities in the field of public procurement related to mixing of selection and award criteria, lack of documentation and audit trail, direct negotiation with bidders during the evaluation process, adjustment of contracts in the absence of unforeseen or unforeseeable circumstances, and use of overly restrictive selection criteria that disadvantage foreign firms, undermining the single market. These irregularities have contributed to the imposition of multiple financial corrections. National authorities are currently implementing an Action Plan to review procurement procedures for ESI funds above EU thresholds. Welsh and Scottish authorities have also faced financial corrections arising from irregularities.

HM Treasury has expressed its intention to improve their management of ESI funds, for example via a statement in 2012 on the use of the EU budget and measures to counter mismanagement indicating their intention to strengthen Parliamentary scrutiny over the government's management of EU funds^{xviii}. An interim report has also been published by the UK government in order to maintain transparency on the use of EU funds^{xix}.

Outlook

UK procurement policy will focus on two tasks in the coming years: implementing the current set of reforms, and enacting the remaining EU procurement Directives. The former includes meeting a number of currently unrealised goals, including in e-procurement uptake, central procurement service utilisation, SME penetration, and staffing levels. In addition, the UK government has set a goal of substantially expanding its pool of suppliers. Currently, EUR 55 billion go to just 39 suppliers. It also means working out the transitional issues in already existing reforms to ensure a smoother functioning and improved customer service.

In terms of the latter goal, coming into compliance with the new EU Directives will pose its own implementation challenges. In particular, the new regulation should lead to a shift away from restricted procedures towards more open formats, a substantial departure for UK contracting bodies and suppliers that will likely result in transition costs for existing contracting authorities.

ANALYSIS

Strengths

In terms of perception of corruption, the UK procurement system appears to be one of the more efficient and corruption-free systems in the EU, delivering significant value for money to taxpayers and a relatively fair and transparent process to businesses. The e-procurement environment is quite advanced and is being widely used, and there are adequate feedback channels and remedies for those who experience irregularities.

Despite the strong performance of UK institutions, efforts to improve the system through reform appear to be ongoing, and have shown real success. E-procurement uptake rates and SME involvement are increasing, delays between publication and award are decreasing, centralisation and standardisation of contracts and procedures are progressing, and estimated financial savings to citizens are substantial.

In addition, despite the still challenging economic environment, the UK has been incorporating social and environmental priorities as mandatory elements of the procurement process.

Weaknesses

Given the pace of reform in recent years, it is not surprising that the system is experiencing some transitional issues in implementation. Agency use of centralised purchasing services has repeatedly fallen short of established targets due to a lack of integration and inconsistent quality of centralised contracts. In some cases, central purchasing service platforms were incompatible with agency systems, leading to technical barriers^{xvi}.

Despite the progress made, public opinion of the procurement system indicates there is still room for improvement. According to a 2013 survey by the Confederation of British Industry trade group, 35% of firms surveyed say they are still facing long PQQs, and 61% feel that procurement practitioners lack commercial understanding when dealing with procurement tenders^{xx}.

In terms of ESI funds management, the UK continues to face issues at audit related to non-compliance with the principles of transparency, non-discrimination and equal treatment of the candidates.

Recommendations

- **ESI funds management issues:** The UK has been subject to repeated sanctions by EU auditors for its non-compliance with the principles of transparency, non-discrimination and equal treatment of the candidates.
 - EU standards and regulations must be incorporated into the UK system in a more systematic way.
 - Transparency and recordkeeping in particular should be prioritised.
- **Integrate CCS:** The recently established central purchasing body and managed purchases services at the CCS are still in a state of transition.
 - Enhance the harmonisation of systems between the CCS and other central government agencies to make centralise and managed purchasing more seamless.
- **Improve bidder experience:** Economic operators cite excessive administration burdens, such as long PQQs, and lack of commercial expertise on the part of public procurement practitioners, as problematic.
 - Continue efforts to streamline administrative burdens, including further reduce the length of PQQs to less than 95 days.

- Develop market knowledge and business orientation through dedicated training and in taking these aspects into account when hiring procurement professionals.

ⁱ HM Government (2013), Small Business: GREAT Ambition, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/266212/bis-13-1313-small-business-great-ambition-FINAL.pdf

ⁱⁱ Llywodraeth Cymru Welsh Government, Procurement Route Planner, Driving best-practice procurement in Wales, available at:

<http://prp.wales.gov.uk/planners/social/planning/developprocplan/selectionapprtender/restrictedtenderprocedure/>

ⁱⁱⁱ Cabinet Office - Government Response to the Consultation on UK Transposition of new EU Procurement Directives, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400242/Government_Response_to_the_Consultation_on_UK_Transposition_of_new_EU_Procurement_Directives_Public_Contracts_Regulations_2015.pdf

^{iv} Cabinet Office (2015), Crown Commercial Service, Procurement Policy Note 02/15 : Public Contracts Regulations 2015, 6 February 2015, available at:

<https://www.gov.uk/government/publications/procurement-policy-note-0215-public-contracts-regulations-2015>

^v European Directives on Procurement and Concessions Status of Transposition Process, available at:

http://www.linklaters.com/pdfs/mkt/paris/Transposition_of_European_Directives_on_Procurement_and_Concessions.pdf

^{vi} The Scottish Government – Scottish Procurement & Commercial Department, available at:

<http://www.scotland.gov.uk/About/People/Directorates/SPCD>

^{vii} OECD, Public Procurement Review Procedures Report, available at:

[http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=ccnm/sigma/puma\(2000\)114](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=ccnm/sigma/puma(2000)114)

^{viii} European Court of Auditors (2013) Taking stock of 'Single Audit' and the Commission's reliance on the work of national Audit Authorities in Cohesion, available at:

http://www.eca.europa.eu/Lists/ECADocuments/SR13_16/SR13_16_EN.pdf

^{ix} Crown Commercial Service Commercial and procurement training, available at:

<https://www.gov.uk/commercial-and-procurement-training>

^x Government Procurement Service (2014) Annual Reports and Accounts 2013/2014, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/340927/4060-14_government_procurement_service_annual_ra_201314.pdf

^{xi} European Commission (2015), DG MARKT, E-procurement uptake.

^{xii} National Fraud Authority (2013), Annual Fraud Indicator, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/206552/nfa-annual-fraud-indicator-2013.pdf

^{xiii} HM Government (2014), UK Anti-Corruption Plan, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388894/UKantiCorruptionPlan.pdf

^{xiv} SBRI Innovate UK website, available at: <https://sbri.innovateuk.org/competitions>

^{xv} SBRI Innovate UK website, available at: <https://sbri.innovateuk.org/sbri-for-government-departments-public-bodies>

^{xvi} National Audit Office (2013), Annual Report from the Comptroller and Auditor General, Improving Government Procurement, p.8 , available at: <http://www.nao.org.uk/wp-content/uploads/2013/03/government-proc-full-report.pdf>

^{xvii} Mystery Shopper Progress Report: Trends from the first three years, February 2014,

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337080/Mystery_Shopper_Three_Year_-_Report.pdf

^{xviii} CBI (2014), Getting a better purchase, Public Sector Procurement Report, February 2014, available at:

http://www.cbi.org.uk/media/2587768/20140218_final_getting_better_purchase.pdf

^{xix} HM Treasury (2012), European Union Finances 2012: statement on the 2012 EU Budget and measures to counter fraud and financial mismanagement, July 2012, available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/221513/eu_finances_2012.pdf

^{xx} CBI (2014), Getting a better purchase, Public Sector Procurement Report, February 2014, available at:

http://www.cbi.org.uk/media/2587768/20140218_final_getting_better_purchase.pdf