



## Public Procurement – Change is Coming?

For many years the public procurement regime has been criticised as being too cumbersome, slow, expensive and complex to be in the interest of any contracting parties.

In December 2011, the European Commission announced a proposed overhaul of the relevant Directives governing this area of law (Directives 2004/17 and 2004/18). As ever, considerable lobbying and negotiations have taken place since then and it is now anticipated that the new Directives will be issued in Autumn 2013 with members states having two years to introduce them into domestic law.

The Cabinet Office released a Procurement Policy Note on 25th July 2013 heralding the changes as achieving the priority objectives of economic growth and deficit reduction - <https://www.gov.uk/government/publications/procurement-policy-note-0513-modernising-eu-procurement-rules>

The new rules, whilst following a similar structure to existing legislation, have greater flexibility which should, subject to them being implemented, produce greater flexibility and speed as well as promoting better commercial outcomes.

The main changes that will be introduced through the new rules are:

- Simpler processes for assessing a bidder's credentials and greater reliance on self certification by bidders with the ultimately successful contractor having to provide full credentials and supporting documentation;
- Certain service contracts will be able to be reserved for social enterprises and mutuals for a period of time;
- A relaxation of the constraints on using the negotiated procedure so it is available for any matters that go beyond "off the shelf" purchases;
- Poor performance under previous contracts will become a ground to exclude bidders;
- The distinction between Part A and Part B Services has been removed with a light touch regime introduced for social and health and some other services. The light touch regime will include OJEU notices but with a much higher threshold;
- The use of electronic marketplace will be specifically authorised;
- Statutory time limits by which bidders have to respond to advertisements and submit tender documentation are to be cut by about a third;
- It has been clarified that Buyers can take into account relevant skills sets and experience of individuals at the award phase;
- Social and environmental aspects gain greater recognition with certification potentially being required;
- Electronic procurement and e-tendering will become mandatory four and half years after the new Directives are introduced;
- There is continued encouragement to break contracts into lots to ease SME participation as well as rules which ensure that turnover is not required to be greater than twice the contract value;
- Market consultations will be permitted, which is hoped to improve specification, outcomes and speed;
- The Innovation Procedure has been introduced to enable bidders to enter a partnership with the contracting authority to innovate new products or services;
- The full life cycle costings of a tender are to be taken into account in the awarding process to encourage better value rather than front loaded discounts and also to promote sustainability.



### Timetable?

Assuming the new Directives are adopted in the Autumn, the Cabinet Office is planning an ambitious and rapid introduction ahead of the 2 year period for mandatory adoption. This will be supported by blended learning packages to aid transition.

There is limited scope to secure amendments to the legislation which will implement it into the domestic law as swathes of the proposed directives are mandatory. There are some areas where member states have a policy choice and these are helpfully annexed to the Procurement Policy Note for ease of consideration. The Cabinet Office will be consulting on how best to implement the Directives but as there are limited areas that can be changed, stakeholders may consider that their time may be better spent preparing for the changes that will be coming.

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