

## Greater Manchester Brussels Service

### Briefing: Public Procurement

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The UK is in the process of implementing the new EU Procurement Directives, which will include updated OJEU forms, revised thresholds, rules on social and environmental aspects, new requirement around electronic communication and e-procurement and much more.

This Policy Briefing is a summary of the EU Procurement Directive.

*If you would like the GM Brussels Office to follow any of the issues highlighted in this Policy Briefing please contact a [member of the team](#).*

#### Background

The 2014 EU Procurement Directives<sup>1</sup> were adopted by the EU institutions and published in the Official Journal of the EU on 28 March 2014. They came into force on 17 April 2014. EU Member States now have 2 years to implement them in national legislation.

The UK is keen to implement these new regulations **as quickly as possible** and to do so without the usual 'gold-plating', as they see the new regulations as an improvement on the old. The proposed timescale for national legislation is early 2015.

There are three parts to the new package:

1. Public Sector
2. Concessions
3. Utilities - long term contracts to operate facilities such as leisure facilities, airports, theaters, etc.

In general the changes are seen to be giving councils the green light to be more 'innovative' with public contracts and to be able to speed up processes.

#### Changes in new Regulations

Below are some of the main changes in the new regulations:

- A much simpler process of assessing bidders' credentials, use of supplier self-declarations, and only the winning bidder should have to submit various certificates and documents to prove their status.

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<sup>1</sup> Public Sector: [EU Procurement Directive \(Public Sector\)](#) - Concessions: [EU Procurement Directive \(Concessions\)](#) - Utilities: [EU Procurement Directive \(Utilities\)](#)

- **More freedom** to negotiate – constraints on using the negotiated procedure have been relaxed, so that procedure is available for any requirements that go beyond “off the shelf” purchasing.
- Poor performance under previous contracts is explicitly permitted as grounds for exclusion.
- The distinction between Part A and Part B Services has been removed, and a new light-touch regime introduced for social and health and some other services. There will be OJEU advertising and other specific obligations for this new light-touch regime, but a much higher threshold has been agreed (EUR 750,000).
- The rules on “Dynamic Purchasing Systems” (DPS) have been greatly simplified, with the removal of the obligation to OJEU-advertise call-off contracts made under the DPS.
- The ability to reserve the award of certain services contracts to **mutuals/social enterprises** for a time limited period.
- Electronic marketplaces for public procurement are expressly permitted, removing any doubt as to their legality.
- **Reduced red-tape** on suppliers’ response times: The statutory minimum time limits by which suppliers have to respond to advertised procurements and submit tender documents have been reduced by about a third. This flexibility could be helpful for speeding up simpler or off-the-shelf procurements, but still permits longer timescales for requirements where bidders will need more time to respond.
- **Review of thresholds:** The directive includes a binding commitment on the Commission, to review the economic effects on the internal market as a result of the application of thresholds, which could lead to an increase in the thresholds, which have been broadly static for 20 years. The review must happen within 3 years of the directive’s transposition.
- Legal clarity that buyers can take into account the relevant skills and experience of individuals at the award stage where relevant (e.g. for consultants, lawyers, architects, etc.)
- Improved rules on **social and environmental aspects**, making it clear that:
  - social aspects can now also be taken into account in certain circumstances (in addition to environmental aspects which had previously been allowed);
  - buyers can require certification/labels or other equivalent evidence of social/environmental characteristics, further facilitating procurement of contracts with social/environmental objectives; and
  - refer to factors directly linked to the production process.
- Electronic communication / **e-procurement will become mandatory** following 4.5 years after the directive’s adoption.
- Various **improved safeguards from corruption:**
  - specific safeguards against conflicts of interest, similar to common existing UK practice where declarations are signed by procurement staff to confirm they have no outside interests with bidders etc;
  - similar provision against illicit behaviour by candidates and tenderers, such as attempts to improperly influence the decision-making process or collusion;

- safeguards against undue preference in favour of participants who have advised the contracting authority or been involved in the preparation of the procedure;
- self-cleaning measures, for suppliers who have cleaned up their bad practices.
- Buyers will be encouraged to break contracts into lots to facilitate **SME participation**, but there is discretion not to do so where appropriate.
- The new rules encourage and allow **preliminary market consultation** between buyers and suppliers, which should facilitate better specifications, better outcomes and shorter procurement times.
- A turnover cap has been introduced to facilitate SME participation. Buyers will not be able to set company turnover requirements at more than two times contract value.
- A new procedure has been introduced: the “**Innovation Partnership**” procedure. This is intended to allow scope for more innovative ideas. The supplier essentially bids to enter into a partnership with the authority, to develop a new product or service.
- The full life-cycle of costings can be taken into account when awarding contracts; this could encourage more sustainable and/or better value procurements which may save money over the long term but appear more costly on the initial purchase price.
- Public authorities will no longer have to submit detailed annual statistics on their procurement activities. The Commission will collect this information directly from the online system, thereby freeing up valuable time and resources for public authorities.
- “**E-certis**”: Where contracting authorities require certificates etc. from winning bidders, suppliers need to know what type of information and documents they will need to provide. “E-certis” will be a central, on-line point where suppliers can find out the type of documents which they may be asked to provide in any EU country, even before they decide to bid. This should be of particular help when suppliers wish to bid cross-border, as they may be unfamiliar with the detailed requirements of other EU Member States.
- Concessions contracts (works and services) will need to be advertised in OJEU where the contract value exceeds EUR 5million, and procured in compliance with the new procedural rules regime for concessions.

## What's Next?

A number of training sessions have already been held. The training handbook can be found on [this link](#).

Some frequently asked questions are dealt with in [this handout](#).

The Cabinet Office are also developing a free e-learning resource to support continuous learning. People working in the public sector can now register for access at [Crown Commercial Service Learning Hub](#). You will receive a notification email when the e-learning package is available.