

# Procurement Policy Note – Feedback Request - European Union (EU) Evaluation of the Public Procurement Directives

Action Note 21/10      6 December 2010

## Issue

1. The Cabinet Office (CO) is seeking your views by response to this PPN on the effectiveness of the public procurement rules. CO will use this feedback to influence the European Commission's evaluation of the procurement directives and any subsequent proposals to change the directives.

## Timing

2. This feedback gathering exercise will run from the 6<sup>th</sup> December 2010 to the 4 February 2011.

## Dissemination

3. Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible, drawing it to the particular attention of those with a purchasing role.

## Contact

4. Please direct your response and any general enquiries to the Service Desk: 0845 000 4999 [ogcservicedesk@cabinet-office.gsi.gov.uk](mailto:ogcservicedesk@cabinet-office.gsi.gov.uk) .

## Background – the Commission's Evaluation

5. The Commission is undertaking a comprehensive evaluation of the EU public procurement legislation<sup>1</sup>, which will last until the spring of 2011. The Commission has stated that the evaluation will examine the effectiveness of the public procurement rules in open, contestable and sound procurement. The Commission, in its recent Single Market Act Communication, states that it aims to make proposals to simplify and update the rules in 2012 at the latest.
6. As well as seeking input from Member States and other stakeholders, the Commission will conduct various studies on the working of the public procurement regime. This will include five studies to:

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<sup>1</sup> Directive 2004/18/EC (The public procurement directive) and Directive 2004/17/EC (The utilities procurement directive)

- a) Evaluate the accessibility of EU public procurement markets for Small and Medium Sized Enterprises.
  - b) Report on the use of procurement procedures/techniques
  - c) Report on the experience of Member States in integrating other policy considerations into procurement policy and practice.
  - d) Refine the measurement of cross-border procurement
  - e) Help the Commission with data on benefits and savings measurement
7. The Commission has appointed various contractors to carry out these studies, who are making contact directly with certain contracting authorities in Member States. CO urges any UK authorities that are contacted to participate actively in the studies, as this will also help to influence the Commission's findings from the UK perspective.
8. The scope of the review is broad and covers everything in the public procurement directive and the utilities procurement directive, and these are available to download from the Commission's website<sup>2</sup>. The corresponding UK rules are available to download also from our own website<sup>3</sup>: The Public Contracts Regulations 2006, and the Utilities Contracts Regulations 2006. Respondents are welcome to comment by reference to either the procurement directives or the UK implementing regulations.
9. However, the standstill and remedies rules (covered in Part 9 in both sets of the aforementioned UK regulations), which recently changed as a result of the new remedies directive, are not within the scope of this review.

### The UK Perspective

10. CO has already engaged with the Commission and plans to play an active role to maximize the UK influence on the outcome with the aim of pressing for streamlined procurement rules. CO is open-minded about the possible changes that stakeholders would like to see, though the Commission has already made clear that it anticipates an EU procurement rules regime of some description will still need to exist.
11. UK stakeholders are therefore invited to offer feedback on:
- a) any aspects relating to specific procurement rules that they have found problematic;
  - b) any suggestions for how such problems could be improved through changes to the existing rules;
  - c) any areas of rule provision that are unnecessary or unusable that could be deleted altogether;
  - d) any areas that are presently not covered by the rules but should be.

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<sup>2</sup> [http://ec.europa.eu/internal\\_market/publicprocurement/legislation\\_en.htm](http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm)

<sup>3</sup> [http://www.ogc.gov.uk/procurement\\_policy\\_and\\_application\\_of\\_eu\\_rules\\_uk\\_regulations\\_.asp](http://www.ogc.gov.uk/procurement_policy_and_application_of_eu_rules_uk_regulations_.asp)

12. The Commission has said that it intends to bring forward a proposal to provide rules for services concessions in 2011, in advance of the Review of the Directives. We would be grateful for your views on whether such a proposal is needed and whether such changes would be better considered under the Review. It would be helpful if respondents could include, as well as your priority views on what should or should not be changed, the reasons why you think what you think, as this will help us to undertake the analysis more fully.
13. CO has already identified a number of rule-provisions that are likely to be in need of some modernising. These are listed below in brief to stimulate thought:

### **Amending the Scope and Flexibility of the Procurement Rules**

- a) Raising the threshold levels: The original thresholds were established 8 years ago and therefore have not moved in line with inflation. Raising the thresholds would result in fewer public contracts requiring the full application of the rules, although the European Treaty principles would still apply and any change would need to be reflected at the international level.
- b) Simplifying the Competitive Dialogue (CD) Procedure: CD enables structured negotiation with suppliers for particularly complex contracts. Feedback about users' experience with CD suggests there are mixed opinions about its usefulness and efficiency: some think it is efficient and effective but needs very high levels of capability and planning to make it work; others think it is too costly and/or too slow. Stakeholders are also invited to comment on any aspects of CD that they think can be simplified or otherwise improved. There may be also scope for greater use of the competitive negotiated procedure.
- c) Improving framework agreements in a number of ways:
- By making them 'open' to allow subsequent competitor(s) to gain entry to the framework at intervals after the initial contest has closed. This could be beneficial to value for money and new entrants, including innovative businesses.
  - Linked to providing for the periodic re-opening of frameworks is the possibility that they could last longer than the current 4 year maximum. The present rules on mini-competitions could also be reviewed.
- d) Simplifying the rules on Dynamic Purchasing Systems (DPS): There is the possibility that DPSs could be a useful addition to the suite of possible approaches to the market if they can be made more usable.

### **Improving the Application of the Procurement Rules**

- e) Faster procurement through reducing minimum timescales: UK authorities made considerable use of the 2010 rules-relaxation regarding the accelerated restricted procedure. This could be made more widely available, as it would enable shorter procurement timescales.
- f) Improving the selection process: A standardised qualification system could reduce the burden on contractors and suppliers to require pre-qualification each time public contracts are tendered for.

- g) Transparency of suppliers' past performance: There are currently legal difficulties in evaluating the quality of performance of suppliers in an objective and transparent way. Removing barriers to enable the assessment of this during the procurement process could lead to improvements in supplier performance.
  
- h) Request clarity on how wider policy agendas can be considered and evaluated in procurement decisions.

### **Next Steps**

- 14. The CO will be planning future engagement with the Commission and discuss our views with other Member States.
- 15. The CO will keep stakeholders updated on developments.