

# Procurement

Key changes arising from the 2014 EU Procurement Directives

## 1. Overview

- The 2004 Directives on public procurement in the European Union were updated in 2014.
- These new rules are passing through the transposition phase. Ireland has significant discretion in how far it goes changing the existing regime to meet these new requirements.
- There are much stronger directives towards public buyers to buy on a regional basis and/or in lots. National contracts are to be avoided in the future unless they are absolutely necessary.
- There is a stronger stand taken on a core part of the common market rules relating to social dumping. Depending on how this is interpreted, this could result in public buyers having to go to greater lengths to ensure bidders using long distance sourcing (e.g. from Asia) are not *socially dumping* and gaining an unfair competitive advantage over EU ( including Irish) companies
- The provisions in relation to probity and conflicts of interest are clarified to a greater extent. How these are interpreted and applied in an Irish context will be of interest to business owners.
- This presentation focuses on the aspects of the new directives that are most relevant to small and medium sized businesses. Public sector specific material and changes to concessions (i.e. Public / Private partnership type arrangements) are excluded. Material on this can be found on the EU Commission [website](#).

## 2. Highlights of the new EU Directives

- There is greater flexibility using negotiation driven procedures for buyers.
- Minimum deadlines are shortening.
- Local authorities will have reduced publicity obligations and more flexibility on deadlines.
- Administrative overhead for bidders is significantly reduced as supporting documents like financials, insurances etc. only have to be supplied by the winning company.
- Green, innovative & ethical procurement strongly emphasised in regime.
- SMEs strongly feature in provisions (must use lots & reduced turnover requirements apply).
- Stronger controls over conflict of interest, favouritism and corruption.
- Simplified arrangements for social, cultural & health services.
- Public services unaffected unless a service is outsourced (full compliance required).

## **Appendices**

### **DETAILED SUMMARY OF 2014 PROCUREMENT DIRECTIVES**

## A1. New EU Directives: simplified rules

### Suppliers

- **Bidders can now self-declare** with only the winning bidder required to provide full documentary evidence of compliance.
- Required turnover should not **normally** be higher than twice the contract value.
- Contracting authorities are **required to divide larger contracts into lots**. They can choose not to do so but not without an explanation.

### Buyers

- Much **greater access and ability to use negotiated procedures**, competitive dialogue and the new innovation partnership model.
- A standard self-certification doc will replace qualification documentation. If on a database, it can be used to identify eligible suppliers automatically.
- **Can require certain standards / labelling** (fair trade, ISO,14001 (environmental mgt)).
- Open process can be reversed in order if wished (i.e. review then exclude & award).
- Local Authorities can now simply publish a PIN instead of OJEU notice for each contract above the threshold.
- Provides opportunities to public bodies to cooperate (horizontal buying) regionally or cross-border subject to certain restrictions.

## A2. New EU Directives: e-procurement

- **E-procurement mandatory by 2018** and must be open to all companies.
- Electronic signatures must be accepted but up to member states to decide if they are required.
- **Electronic catalogues:** a new tool to be made available so companies can submit offers in a structured format (e.g. consumables in the scientific research space or office supplies).
- **Dynamic purchasing systems** to be used for *off the shelf* products / services that have been verified as fit for purpose (again frequently available in scientific research space to select one example).
- **E-certis is a repository** that provides access to the documents required when bidding **cross borders**.

### A3. New EU Directives: simplified service contracts regime

- **Most services still require full application of rules** for contracts above €207k or €134k for central government departments.
- **A lighter regime will however apply** henceforth for service contracts in **the following spaces**: social services, health services, cultural services, educational services, certain legal services (e.g. free legal aid), hotel and restaurant services.
- **In the future, full EU rules will only apply to contracts over €750k.** The only rules that will apply below this threshold will be to treat bidders equally.
- Below the €750k threshold no EUROPEAN rules apply but national guidelines will continue to apply (e.g. three quotes, MEAT etc.).
- Exclusions from the scope of public procurement have been extended.

## A4. New EU Directives: Green procurement

- Horizontal clause: **companies that do not comply with environmental standards can be excluded**. In fact, where it is known or there is a reasonable amount of evidence that the company does not comply, they cannot be awarded a contract.
- Companies **can be required to meet certain standards** although the specific standard cannot be specified. ISO14001 will go a long way towards meeting most requirements. The requirements must be linked to what is being purchased (not ancillary to tender).
- **All factors in the production process** can be considered in the awarding of a contract (e.g. use of toxic chemicals can be prohibited).
- **Life cycle costing is being encouraged** and this applies to internal and external costs. These can only be taken into account if they can be determined and verified (esp. externalities).



## A5. New EU Directives: Social Clauses

- Social aspects are not limited to social inclusion – they cover compliance with legislation to support the implementation of environmental, social and innovative policies also.
- Must be at least compliant with existing directives, rules, regulations and laws and companies failing to meet this standard can be excluded.
- Abnormally low tenders can be excluded as these clauses are at risk – **this is to prevent social dumping.**
- The process used to develop products / services can now be considered positively (i.e. if disadvantaged employees feature) or negatively (not of a high enough standard).
- Some contests can now be reserved for specific aims (e.g. used to relieve high unemployment in areas of market failure). **This could be very positive for SMEs.**
- There are changes to the rules and exemptions for social, cultural and health services.
- Public services and their organisations are not affected as long as they are not outsourcing services which must, of course, go through a procurement tender.
- **Companies that violate certain rules** can now be **excluded** from public procurement (e.g. if convicted of failure to pay taxes or comply with the social clause).
- **Subcontractors must comply with all rules** and a chain of responsibility drawn up.

## A6. New EU Directives: Innovation

- Within existing processes, innovation will be rewarded where it demonstrably shows **lifecycle cost benefits**.
- **Competitive dialogue is simplified** making innovation projects more easy to operate (technical or financially complex projects).
- **The innovation partnership** allows partners to be selected on a competitive basis and develop innovative solutions tailored to a public organisation's requirements.
- **R&D is exempt from the rules**. Once developed, the contest must be run using normal market rules e.g. an open competition or a competitive dialogue.
- An innovation partnership can cover both phases (pre-commercial and commercial).

## A7. New EU Directives: Transparency & anti-corruption

- Stronger guarantees for sound procedures.
- New definition of a **conflict of interest** and member states are now expected to take steps to prevent, identify and address conflicts of interest.
- New standards for any **pre-tender consultations**. This includes sharing any information garnered with other competition participants.
- **Grounds for exclusion** are outlined and this includes attempts (real or perceived) to influence the outcomes of a contract, false statements in relation to the criteria on which an award is made and any anti-competitive practices.
- There are new rules on modifying and extending contracts due to unforeseen circumstances.
- New **transparency requirements** mean that states are meant to monitor and report violations of procurement rules, submit reports to the Commission and keep copies of contracts over a certain threshold.
- **Public procurement awards must be covered by a report** by the purchaser and this report must explain the decisions relating to the procedure, any conflicts of interest (and steps taken to manage them) and the requirement to provide the report to national authorities where necessary.

THANK YOU



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