

26 February 2015

## GUIDANCE NOTE

# NEW PUBLIC CONTRACTS REGULATIONS 2015 COME INTO FORCE TODAY

### Overview

On 28 March 2014, the new EU Procurement Directives were published in the Official Journal of the EU (OJEU). They came into force on 17 April 2014. The UK and other EU Member States have until 17 April 2016 to transpose the Directives in national implementing regulations.

There are three new Directives:

1. Directive 2014/24/EU on public procurement, replacing Directive 2004/18/EC, for Public Sector Contracts.
2. Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors, replacing Directive 2004/17/EC, for Utilities Contracts.
3. Directive 2014/23/EU on the award of concession contracts, which does not directly replace any previous directive.

The Government conducted a consultation exercise on the draft Public Contracts Regulations in September 2014 and its response was published on 30 January 2015.

[Government response to the consultation on UK Transposition of new EU Procurement Directives: Public Contracts Regulations 2015](#)

The aims of the new regulations are to:

- Simplify public procurement
- Increase transparency and reduce bidding costs
- Enable better value outcomes for Government and industry
- Ensure that small businesses have better access to public sector contracts.

### A QUICK GUIDE TO THE CHANGES

There are a number of new requirements for **low value contracts** which apply to:

- All Central Government contracts greater than £10,000 to EU threshold
- All Local Government, NHS and Housing contracts greater than £25,000

They do not apply to:

- Maintained schools and academies
- Healthcare services for the NHS (CCGs)

## **Requirements for advertising opportunities and the award of contracts**

Requirement to advertise all opportunities on Contracts Finder within 24 hours of first publication, regardless of wherever else it is advertised i.e. local authorities will need to publish to Contracts Finder as well as their own e-tendering systems/websites.

Contracts Finder can be the sole method of advertising, should the authority wish.

### **Time limits for responses**

The time limits for responses to the Contract Notice can be set by the individual authority, allowing enough, but not disproportionate, time for interested parties to respond.

### **Contract Award**

There is a requirement to publish a Contract Award on Contracts Finder, even if the opportunity was not advertised in the first place.

This requirement only applies where the opportunity is placed in the public domain and is open to any supplier to express an interest i.e. there would be no requirement to advertise an opportunity where a quote process is being undertaken, because the opportunity is only made available to a selected number of bidders.

The full tender pack must be made available freely online.

### **Abolition of Pre-Qualification Questionnaires (PQQs)**

PQQs are no longer allowed for procurements below the EU thresholds.

For the purpose of the regulations a PQQ stage means “a stage in the procurement process during which the contracting authority assesses the suitability of candidates to perform a public contract for the purpose of reducing the number of candidates to a smaller number who are to proceed to a later stage of the process.” i.e. this essentially means all below threshold procurements must use an ‘Open style procedure’ whereby any assessment criteria are included within the Invitation to Tender.

Authorities may, however, ask questions which are relevant to the subject matter and proportionate – this should focus on whether candidates meet requirements or minimum standards of suitability, capability, legal status or financial standing.

### **What next?**

Consultations on the draft implementing regulations for the new Utilities and Concessions Directives will take place during 2015.

The Concessions Directive provides scope and opportunity for mutual and social enterprises, and greater flexibility for commissioners, in that certain services contracts (mainly social, health and educational) can be reserved to organisations that meet certain conditions including:

- The pursuit of a public service mission linked to the delivery of the services
- Reinvestment of profits to meet this mission and objective
- Owned/managed on the basis of employee ownership/participatory principles
- Not to have been awarded a contract for the services concerned by the contracting authority concerned in the past three years.
- Duration of the contract must not exceed three years

- Such 'reserved' contracts must be open to all relevant suppliers within the rights of the directive and must be awarded using the procedures in the directive, including a call for competition on OJEU which must make reference to the relevant article of the directive.
- Contracts will be awarded using a 'light touch' regime

### **Further information**

<https://www.gov.uk/transposing-eu-procurement-directives>

V4 Services

Tel. [contactus@v4services.co.uk](mailto:contactus@v4services.co.uk)

[www.v4services.co.uk](http://www.v4services.co.uk)