



The Public Contracts Regulations 2015 The changes

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An analysis of the procurement rules

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The Public Contracts Regulations 2015

The changes

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Background

Following a lengthy legislative process, three new directives on public procurement emerged last year. These were:

- a revised directive on public works;
- supplies and services contracts;
- a revised directive on procurement in the water, energy, transport and postal services sectors; and
- a new directive on concessions.

The directive on public works, supplies and services contracts was transposed into UK law on 26 February 2015 by the Public Contracts Regulations 2015.

This booklet is a summary of those regulations. It focuses on the new and changed rules rather than those which have largely remained unchanged.

The regulations, with the exception of certain provisions relating to electronic communications, and, for public sector bodies other than the government, the publication of information on Contracts Finder, came into force on 26 February.

The procurement rules, designed to achieve fair competition for public sector work across the EU, began to take shape in 1971. They are generally believed to have encouraged competition and transparency but are often considered to be too rigid and bureaucratic.¹

Before publishing its proposal for a new directive, the European Commission

undertook research to evaluate the effects of the procurement directives.² It found there had been considerable savings as a result of the competition requirements, substantially outweighing the costs of carrying out the procurement.³ It also found that there had been little market penetration by providers in this field of other national markets. The Commission speculated that this was because of the nature of the activities largely provided within the public sector, which makes them unsuitable for transnational tendering. In some cases, such as public administration and education, this is undoubtedly true. In others, where services are fundamentally similar across the EU, it is more surprising that cross-border tendering is so limited.

The Commission also undertook extensive consultation on the proposed changes.⁴ There was universal support for simplifying the procedures and making them more flexible. There was strong support for reducing administrative burdens related to the choice of bidder. In particular, this was seen as a barrier to small and medium-sized businesses. There was less support for the notion of using the rules as a means of achieving societal goals, with businesses in particular reluctant to see the procurement rules used to achieve other policy objectives.

¹ This is reflected in the reasons for embarking on this exercise and in the response to the consultation.

² EU Public Procurement Legislation: Delivering Results Summary of Evaluation Report.

³ It is estimated that the additional cost of compliance with the EU procurement rules (i.e. in addition to procurement costs which would have been incurred in any event) is €1.68 billion per annum and the savings in the region of €20 billion. The research provides support for the view that for smaller contracts the costs of compliance can be disproportionate. It is estimated that for a contract with a value of €125,000 the procurement costs can amount to between 18 and 29% of the contract value.

⁴ Green Paper on the modernisation of EU public procurement policy Towards a more efficient European Procurement Market COM (2011) 15 final.

Procurement between public authorities

Procurement between public authorities, a fertile subject for litigation in recent years, is the subject of specific new exclusions set out in regulation 12.

It frequently happens that a public authority enters into a contract with another public authority for the performance of some of its functions. In addition, public authorities have often set up companies to undertake work and awarded contracts directly to these companies. The question is whether these types of contract fall within the ambit of the procurement rules.

The preamble to the new directive states that this needs clarifying. In fact this has to a large extent already been clarified by:

- the CJEU in the cases of *Teckal*;⁵
- subsequent cases dealing with companies controlled by local authorities; and
- in the cases of contracts awarded between authorities, the case of *Commission v Germany*⁶ and the Commission Staff Working Paper dated 6 October 2011.⁷

The new provisions are contained in regulation 12. These reproduce the principles of the case law but add very little that is new.

Regulation 12(1) sets out the *Teckal* principles with one significant difference. The paragraph provides that a contract awarded by a contracting authority to another legal person falls outside the scope of the directive when the

following cumulative conditions are satisfied:

- the contracting authority exercises over the legal person concerned a control which is similar to that which it exercises over its own departments;
- at least 80 per cent of the activities of that legal person are carried out for the controlling contracting authority or for other legal persons controlled by the contracting authority; and
- there is no private participation in the controlled legal person.

The only change to the established *Teckal* principles is where a percentage is applied, instead of the rather more flexible test developed by the CJEU to the effect that the company must carry out the 'essential part' of its activities with the contracting authority.

In the case of *Commission v Germany*, four German local authorities had agreed to supply waste to an incinerator owned by the City of Hamburg. The CJEU agreed with Germany that this fell outside the scope of the EU procurement rules as being an example of inter-authority cooperation and the joint fulfilment of public interest functions. In these circumstances, the arrangements did not adversely impact on the main object of the procurement rules, namely the free movement of services, so there was no need for a competitive

⁵ *Teckal Srl v Comune di Viano, Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (Case C-454/06).

⁶ *Commission v Germany* (Case C-480/06).

⁷ However, a contract cannot simply be awarded to another public authority without complying with the rules. A contract of this nature is not excluded from the operation of the rules, even if the payments are only to cover costs and do not include a profit element: *Piepenbrock Dienstleistungen GmbH & Co v Kreis Düren* (Case C-386/11).

procurement process. This principle is now included in the regulations.

Regulation 12(7) provides that agreements between two or more contracting authorities are not within the scope of the rules provided that the following conditions are fulfilled:

- the agreement establishes a genuine cooperation between the participating contracting authorities aimed at carrying out jointly their public service tasks and involving mutual rights and obligations of the parties;
- the agreement is governed only by considerations relating to the public interest; and
- the participating contracting authorities perform on the open market less than 20 per cent of the activities concerned by the cooperation.

The first two of these criteria should normally be easy to establish. Provided this is not in the nature of a commercial joint venture, these requirements will be fulfilled. The meaning of the third is not easy to grasp at first sight.

The 'activities concerned by the cooperation' presumably refers to the subject matter of the contract. If the contracting authority is undertaking this activity and provides it both as a public service and as a commercial venture, then the commercial venture cannot comprise more than 20 per cent of the total turnover. However, this test could be difficult to apply in the context of local authorities. For instance, are

leisure services 'performed on the open market'? Presumably they are, since they are open to any member of the public who wishes to use them. Depending on the circumstances, an authority may make a profit from them, though making a profit is presumably not critical in determining whether an activity is performed on the open market.

Principles of procurement

The well-established principles governing public procurement are now included within the rules. Regulation 18(1) provides that:

‘contracting authorities shall treat economic operators equally and without discrimination and shall act in a transparent and proportionate manner.’

The regulation goes on to provide that procurement must not be designed with the intention of excluding it from the directive or of artificially narrowing competition. Artificial narrowing means that there is an intention of unduly favouring or disadvantaging certain economic operators.

It is sensible for the core principles to be included in the rules. On the question of structuring the contract, there is a degree of tension between two different objectives of the rules. On the one hand, a contract should not be divided up into smaller pieces of work to avoid the application of the rules. However, authorities should consider how the work can be made more attractive for smaller businesses. This may include dividing it up so the individual contracts are smaller.

New procedures

There are now six procedures available to contracting authorities:

- open procedure;
- restricted procedure;
- competitive procedure with negotiation;
- competitive dialogue;
- innovation partnership; and
- negotiated procedure without prior publication.

The two new ones are competitive procedure with negotiation and innovation partnership. The old procedures have all been retained apart from negotiated procedure with the prior publication of a contract notice. Given the scope for negotiation in the new procedures, this procedure is no longer necessary.

Under regulation 26(4) authorities can only use a competitive dialogue or a competitive procedure with negotiation in the following situations:

- the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- the needs include design or innovative solutions;
- there is a need for negotiation because of circumstances related to nature, complexity or legal and financial make-up or risks;
- technical specifications cannot be established with sufficient precision; or
- only irregular or unacceptable tenders have been received in response to open or restricted procurement.

These are widely worded descriptions. If an authority wishes to use one of these procedures it will not be too difficult for it to convince itself that it has grounds to do so.

What is the difference between the competitive procedure with negotiation and the competitive dialogue procedure? The distinction lies in the purpose of the negotiation. In the competitive procedure with negotiation, the purpose of the negotiation is 'to improve the content of the offers in order to better correspond to the award criteria and minimum requirements'. The obligation of authorities in the competitive dialogue procedure, however, is to 'open ... a dialogue the aim of which shall be to identify and define the means best suited to satisfying their needs'.

Since 'needs' and 'requirements' are to all intents and purposes synonymous, the distinction is rather a fine one. The intended difference appears to be this: in the case of the competitive procedure with negotiation the authority knows exactly what it wants; it can specify its requirements but is allowed to negotiate with a view to ensuring that the bid is an improvement in terms of meeting them. In the case of competitive dialogue, the authority knows what its needs are but does not have a specific set of requirements setting out the means by which those needs can be fulfilled.

And what of the innovation partnership? The purpose of this procedure is to establish 'a structured partnership for the development of an

innovative product, service or works and the subsequent purchase of the resulting supplies, services or works'. The regulation requires the partnership to be 'structured in successive stages following the sequence of steps in the research and innovation process, possibly up to the manufacturing of the supply and the provision of the services'. The procedure is the same as the competitive procedure with negotiation. Contracting authorities will only be able to use this procedure if there is not a solution on the market.

Allowing for more dialogue and negotiation in procurement may produce greater flexibility but will need to be carefully handled. In the HM Treasury review of the competitive dialogue process, one of the main criticisms of public authorities was that competitive dialogue was used too frequently and often in situations where it was inappropriate.⁸ It can be tempting for authorities to use competitive dialogue, as it saves the hard work of deciding exactly what its requirements are and how they should be specified. However, anyone who has participated in a competitive dialogue can testify that the discussion of the solution carried on with a number of bidders – often at least three until quite a late stage – can be very time-consuming. Because a number of different solutions are being developed it can also be complex and wasteful. Unless it is used sparingly, there is clearly potential for both the competitive dialogue and the competitive procedure with negotiation to generate more discussion and correspondence than solid progress.

⁸ HM Treasury Review of Competitive Dialogue. November 2010.

Framework agreements

It must be questionable whether the new innovation partnership procedure is needed at all. There is nothing inherently problematic about drafting a contract which allows for a solution or product to be developed in successive stages in accordance with set milestones. For instance, ICT solutions contracts are drafted on this basis. There is nothing in the current EU procurement rules which prevents or inhibits this procedure being incorporated in contracts. The problem here is the assumption that the introduction of a procedure will encourage innovation which is assumed to be a good thing. It depends what you mean by innovation. Innovation in the sense of a new discovery or breakthrough is relatively rare and is more likely to be achieved through a process of research and development than because somebody has written a requirement in a contract. The development of a solution – whether for a product or a service – cannot accurately be described as innovation.

The Commission advises that contracting authorities should not use the innovation partnership procedure in such a way as to prevent, restrict or distort competition. It then goes on to suggest that in certain cases, establishing a series of parallel innovation partnerships could contribute to avoiding such effects. This is very difficult to understand. If these different partnerships are for different solutions, it would seem to be irrelevant to the issue of competition. If they cover the same ground, they would seem to have a larger role in creating duplication than avoiding competition.

There has long been a question about the use of a framework agreement by contracting authorities which were not originally parties to it. Clearly, a public authority could not use a framework agreement unless it was listed in the OJEU notice which advertised the framework agreement.

It is not clear whether an authority needs to be a party to the framework agreement entered into at the beginning or whether it can choose, as it were, to join the party when it feels the need to do so. The new regulation 33 governing framework agreements endorses the latter approach. It provides that the procedures for calling off under a framework agreement 'may be applied only between those contracting authorities clearly identified for this purpose in the call for competition or the invitation to confirm interest and those economic operators originally party to the framework agreement as concluded'.

What it does not say is that the contracting authorities using the framework need to have been a party to that agreement. This allows some scope for abuse. Large numbers of authorities could be named on the notice. To allow one of these to use the framework some years later when it has not joined at the beginning looks like evading the requirement to seek competitive tenders for the work.

Preliminary market consultations

The new regulation 40 provides that, before procurement, authorities may conduct market consultations to prepare the procurement and inform economic operators of their procurement plans and requirements. This has been frequent practice but now it receives official sanction.

Under regulation 40(2) authorities may seek or accept advice from independent experts or authorities or from market participants. This advice may be used in planning and conduct of procurement provided there is no distortion of competition or breach of principles of non-discrimination and transparency.

How should authorities behave if an organisation which has advised on the procurement before it takes place then wants to participate in it? Under regulation 41, if a tenderer has advised the authority or has otherwise been involved in the preparation of the procurement procedure, the authority must take appropriate measures to ensure that participation of that tenderer does not distort competition. This can include communication to other tenderers of relevant information exchanged in the context of or resulting from the earlier involvement. The tenderer should only be excluded where there are no other means to ensure compliance with the principle of equal treatment. Exclusion is to be regarded as a last resort.

Electronic availability of procurement documents

The new regulation 53 provides that 'contracting authorities must, by means of the internet, offer unrestricted and full direct access free of charge to the procurement documents' from the date of the publication of the OJEU notice.

The definition of 'procurement documents' is 'any document produced or referred to by the contracting authority to describe or determine elements of the procurement or procedure. This includes the technical specifications, the descriptive document and the proposed conditions of contract'.

This means that the preparation of contract documents can no longer take place during the course of a procurement. Authorities will have to ensure that the terms and conditions of contract will be available from the date of publication of the OJEU notice. This will in some instances be a considerable challenge. However, the documents will clearly be subject to change during the course of a procurement and for some contracts it will be difficult to provide more than outline documents at this stage.

Exclusion grounds

Contracting authorities are obliged to exclude economic operators from a procurement if they have committed one of the offences listed in regulation 57(1). These include bribery, corruption and fraud. New offences have been added to the list relating to people trafficking and terrorism.

There is a new provision requiring mandatory exclusion for breach of tax or social security obligations where this has been established by a judicial or administrative decision. There is discretionary exclusion on these grounds if the authority can demonstrate that the operator is in breach of tax or social security obligations, even though this has not been established by a judicial or administrative decision.

The mandatory exclusion for commission of offences may be disregarded on an exceptional basis for overriding reasons relating to the public interest. The mandatory exclusion for breach of tax or social security obligations may be disregarded where it would be clearly disproportionate.

Discretionary grounds for exclusion include:

- violation of obligations in relation to environmental, social and labour law;
- insolvency, bankruptcy, winding up;
- grave professional misconduct;
- distortions of competition;

- significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract; or
- misrepresentation in providing information.

Under regulation 57(13) there is an ability for an economic operator to demonstrate 'self-cleansing'. This means that an operator subject to one of the grounds for exclusion may provide evidence to the effect that measures taken are sufficient to demonstrate its reliability, despite the existence of a relevant ground for exclusion. If the authority considers this to be insufficient, it must provide a statement of reasons.

Shortlisting and award criteria

The distinction between the criteria used for selecting companies to be invited to bid (i.e. the shortlisting process) and the criteria used for evaluating the winning bid have for long been a source of confusion. The shortlisting criteria must be related to the bidder itself. However, the criteria for choosing the winning bid must be focused on the characteristics of the bid rather than the company that submitted it.

A public authority that mixed up these two stages and used criteria related to the company as contract award criteria was liable to have its decision declared unlawful and to be compelled to undertake the procurement process again, as happened in the case of *Lianakis*.⁹

The new selection criteria are set out in regulation 58. The changes are not extensive. The conditions for participation are now listed as:

- suitability to pursue the professional activity;
- economic and financial standing; and
- technical and professional ability.

This does not really represent a change, simply a recognition of the fact that a significant number of contracts involve the provision of professional services.

European single procurement document

This is provided for in regulation 59. It will be an updated self-declaration designed to reduce the burden of responding to opportunities. It must be accepted by authorities as preliminary evidence. It will enable a contractor to declare that:

- it is not subject to grounds for exclusion;
- it meets relevant selection criteria; and
- where applicable it fulfils objective rules and criteria required under regulation 65 to enable it to participate in a procurement.

Regulation 65 sets out the procedure for reducing the number of otherwise qualified candidates to be invited to participate in procurement.

⁹ *Emm. G. Lianakis AG v Dimos Alexandroupolis* (Case C-532/06).

Contract award criteria

Under regulation 67(1) contract award criteria have to be designed to identify 'the most economically advantageous tender assessed from the point of view of the contracting authority'.

Regulation 67(2) requires that the most economically advantageous tender 'shall be identified on the basis of the price or cost, using a cost-effectiveness approach such as life-cycle costing in accordance with regulation 68 and may include the best price-quality ratio which shall be assessed on the basis of criteria including qualitative, environmental and/or social aspects linked to the subject matter of the public contract in question'. The reference to social aspects is new.

Since these must be connected to the subject matter of the contract, this does not give contracting authorities the power to use procurement as a means of promoting social improvement generally. For instance, it would not be lawful to discriminate against contractors who had business links with a government of which the contracting authority disapproved.

There is now more detail on the factors which can be used in assessing which tender is the most 'economically advantageous'.

Such criteria may comprise:

- quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics;
- organisation, qualification and experience of staff where the quality of the staff employed can significantly impact the level of the performance of the contract; and
- after-sales service and technical assistance, delivery conditions.

The second of these is new. It can be a reasonable requirement if it prevents contractors from ceasing to use the staff who drew the employing authority to their bid. However, it appears to overlook the fact that there is a free market in labour. Employees who are able to command higher salaries elsewhere are free to up sticks and leave. A requirement that they have the permission of a client to do so is difficult to include in a contract of employment.

Abnormally low tenders

Regulation 69 sets out the circumstances in which a contracting authority is obliged to investigate a tender which appears to be abnormally low.

The new obligation is as follows: 'contracting authorities shall require economic operators to explain the price or costs proposed in their tenders where tenders appear to be abnormally low in relation to the works, supplies or services'.

It is clear that there is an obligation to investigate even if the authority is planning to accept the tender. The regulation goes on to provide that 'the bid may only be rejected where the evidence supplied does not satisfactorily account for the low level of price or costs proposed'.

Rejection is mandatory if the low price is because of non-compliance with laws relating to environmental, social or labour law. It would seem to require a substantial degree of naivety on the part of a contractor to be rejected on this basis.

Contract changes

A vexed question under the old rules was the extent to which a contracting authority can change the terms of a contract which has been let under the procurement rules. Clearly most, if not all, major contracts require a degree of flexibility and to prohibit changes would be impracticable. At the other extreme, a public authority cannot be allowed to carry out a tendering exercise, award a contract and then change it into a completely different contract. The question is where, between the two extremes, the line should be drawn. There was nothing governing this in the 2004 directive so the rules were laid down by the CJEU in the case of *presstext*¹⁰ which provided that a substantial change to the contract would necessitate a new award.

Regulation 72 allows changes during the course of the contract for a number of specific reasons:

- it is provided for in a review clause;
- there is a need for additional works, services or supplies;
- the need results from unforeseen circumstances;
- there is a replacement contractor;
- the modification is not substantial; or
- it is below a certain value.

Inevitably, these reasons are subject to conditions.

As regards review clauses, these must be clear, precise and unequivocal. They must state the 'scope and nature of possible modifications or options as well as the conditions under which they may be used'. They must not provide for modifications that would alter the overall nature of the contract. This means that

¹⁰ *Presstext Nachrichtenagentur GmbH v Austria* (Case C0454/06).

review clauses are going to be difficult to draft. Those preparing them will need to provide for the precise circumstances in which the contracting authority may need to change the contract. This involves an element of looking into the future so there is a danger that such clauses will fail to provide for the unexpected event which necessitates a contract change.

For additional works, services or supplies, the contract can be amended to allow these to be ordered if a change of contractor cannot be made for economic or technical reasons or would cause significant inconvenience or substantial duplication of costs. Any increase in price must not exceed 50 per cent of the original contract price. This is calculated cumulatively.

If an authority is relying on unforeseen circumstances, the need must have been brought about by circumstances which a diligent contracting authority could not foresee and the modification must not alter the overall nature of the contract. There is obviously considerable scope for argument about both these conditions. In addition, the increase in price must not exceed 50 per cent of the original contract price.

A change of contractor is permitted when:

- this is in accordance with a review clause;
- it is the succession of a new contractor to the position of the initial contractor as a result of a corporate restructuring provided that the successor contractor fulfils

the original selection criteria and there are no other substantial modifications to the contract; or

- the authority itself assumes the main contractor's obligations towards its subcontractors.

For a change not to be substantial, it must not:

- introduce conditions which, if they had formed part of the original procurement procedure, would have allowed for the admission of other contractors or the acceptance of a different offer;
- change the economic balance of the contract in favour of the contractor in a manner not provided for in the initial contract; or
- extend the scope of the contract considerably.

This is essentially the *presstext* test, now set out in the regulations.

Lastly, changes are permitted if their value is below both the threshold for the applicable type of contract and below 10 per cent of the original value in the case of service and supply contracts and 15 per cent in the case of contracts for works. The percentage must be assessed on a cumulative basis. In addition, the change must not alter the overall nature of the contract.

While there is potential for debate about some of the tests which have to be applied, on the whole, the new regulation provides a sensible and workable set of rules governing contract variations.

Contracts for social and other specific services

Under the old rules there were two types of public service contracts:

- contracts for part A services, which include telecommunications, financial services and ICT services, were subject to the full rigours of the procurement rules; and
- contracts for part B services, which include health services and legal services, required only very limited requirements to be fulfilled.

The distinction was eroded – some would say thrown into confusion – by the 2006 Commission Interpretative Communication which stated that, although contracts for part B services and/or contracts with values below the relevant threshold were not subject to the advertising requirements of the directive, they nonetheless needed to be publicised and the procurement process dealt with in such a way as to ensure an appropriate level of openness and competition.¹¹

The distinction has now been abolished and all services contracts will have to be advertised and procured in accordance with the requirements of the directive. However, many of the types of contract which were previously subject only to part B requirements will now fall within the new 'light touch' regime for services where there is thought to be limited cross-border interest. For such services there is a separate and much higher threshold of €750,000. The reasoning behind this is said to be that contracts below this level will not typically be of interest to providers from other member states. This regime will require the placing of a contract notice and observance of

the basic principles of transparency and equal treatment. The services to which this new regime applies are listed in schedule 3 of the regulations and broadly fall into the following categories:

- health and social services;
- educational and cultural services;
- social security and benefit services;
- religious services;
- hotels and restaurants;
- legal services;
- administrative and government services;
- services to the community; and
- public security and rescue services.

¹¹ Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives (2006/C 179/06).

Staff mutuals

Under regulation 77 certain types of contract (essentially in the fields of culture, health and social services) may be reserved for particular organisations, generally referred to in the UK as 'staff mutuals'. In order to qualify, such an organisation must have the following characteristics:

- it must have a public service mission;
- its profits must be reinvested rather than distributed to shareholders; and
- there needs to be an element of staff involvement.

In order for a contract to be awarded in accordance with this provision, there must have been no award from the same contracting authority during the previous three years. This ought to mean that staff mutuals will not have to face competition from the moment they are set up.

Miscellaneous provisions

The intention of the government in relation to implementation of the revised procurement directive was that there should be no gold-plating. In other words, the regulations needed simply to implement the directive without additions and reinterpretations. As a result of this, the regulations largely copy the wording of the directive, with very little attempt to reinterpret any of the provisions or to put them into language of the type which is more commonly used in UK legislation.

In addition, the government has taken the opportunity of indulging in a certain amount of gilding by including some of the recommendations of Lord Young in his 2013 report *Growing Your Business* which included recommendations as to how access to public sector contracts for SMEs can be improved.

Regulation 107 provides that contracting authorities must have regard to any guidance issued by the Minister for the Cabinet Office in relation to the qualitative selection of economic operators. This relates to whether such operators are invited to participate in a procurement process or not. Guidance was published by the Crown Commercial Service (CCS) in February. The main requirements are as follows:

- the standardised PQQ provided with the guidance should be used. Not all the questions are relevant or appropriate to every procurement, but once a question is selected, the standardised wording ought to be used;

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- from 1 September 2015, any deviation from the standard wording must be reported to the CCS within 30 days of the PQQ being published, together with a brief justification for the deviation; and
 - any additional project-specific questions must be relevant and proportionate to the particular requirements of the procurement.

For below-threshold procurements, authorities must not include a pre-qualification stage. However, candidates can be required to answer suitability assessment questions if they are relevant to the subject matter of the procurement and proportionate. Under regulation 113, all public contracts must contain these requirements in relation to payments:

- payments must be made within 30 days of valid and undisputed invoice;
- invoices must be verified in a timely fashion and undue delay is not a reason for not regarding an invoice as valid and undisputed; and
- subcontracts must include provisions to the same effect.

OUR CREDENTIALS

Public procurement is absolutely central to the work that we do at Sharpe Pritchard.

Many of our lawyers are trained procurement experts. We have a detailed and practical understanding of EU and UK procurement law, including an in-depth understanding of the Public Contracts Regulations and the surrounding case law.

As such, we are ideally placed to guide our clients through all of the EU procurement procedures to avoid breaching the Public Contracts Regulations. This includes:

- preparing all contract documentation;
- helping to build and road-test evaluation criteria;
- advising at each stage of the competitive process;
- debriefing unsuccessful bidders; and
- assisting with all governance and compliance requirements.

The risk of a challenge to procurement decisions is increasing as the costs of tendering drive contractors to question unfavourable decisions.

Timing is often critical in these situations, and the Sharpe Pritchard team is available to act on short notice to support public authorities who may be required to respond at urgent notice.

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