

Processes and procedures



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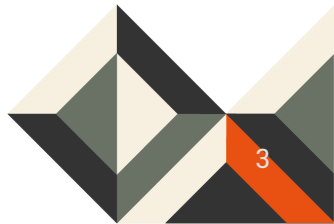
Processes and procedures: what are the main differences to the PCR regime?

- Greater emphasis on transparency, both prior to and after the actual procurement competition: lots more notices!
- Simplified competition procedures: greater flexibility
- Frameworks: longer and more flexible in admission processes
- Greater and more centralized management of excluded bidders: the new debarment list procedure
- Greater emphasis on how contract performance should be assessed and publicized
- Modifying public contracts: still a minefield but a bit more flexibility through the “known risk” exemption



Preliminary steps: more pre-competition notices

- Pipeline notices
- Planned procurement notices
- Preliminary market engagement



Pipeline notices – how do they differ from the old PINs under the PCRs?

- Applies to any contracting authority that considers that it will pay >£100m in the coming FY
- Must publish a notice before end of 56 days of FY start
- “A “pipeline notice” means a “notice setting out specified information about any public contract with an estimated value of more than £2 million in respect of which the contracting authority intends to publish a tender notice or transparency notice during the reporting period.”
- Unlike “planned procurement notice”, pipeline notices are compulsory and do not shorten the tender periods
- Preliminary engagement notices – not required before prelim engagement, only required prior to tender notice being issued.



Simplified competition procedures

- 5 procedures under the PCRs reduced to 2
- Single-stage “open procedure”
- Multi-stage “competitive flexible”
- Participation conditions may relate to experience but not prior contracting relationship with authority



Frameworks: what has changed?

- New concept of open frameworks: 8 years, and new suppliers can join during lifetime
- Change from current rules (max 4 years, new suppliers cannot join established framework)



Award criteria refinements under s.24: significantly more flexibility or greater risk?

(1) A contracting authority may refine an award criterion as part of a competitive flexible procedure if—

(a) the tender notice or associated tender documents provide for the refinement of the criterion, and

(b) the authority is yet to invite suppliers to submit tenders to be assessed under section 19 (award following competitive tendering procedure).

(2) A contracting authority may, in consequence of refining an award criterion under subsection (1), refine the indication of the relative importance of the award criteria under section 23(3)(b).

(3) A contracting authority may not make a refinement under this section if it would result in award criteria that would, had the refinement been made earlier, have allowed one or more suppliers that did not progress beyond an earlier round or selection process to have done so



Greater transparency at point of contract award/entry/abandonment

- Assessment summaries provided to bidders (see draft Reg 31 for contents)
- Contract award notices now have to be published BEFORE entry into contract (under PCRs only required 30 days after award)
- Contract details notice under section 53 applies when contract entered into
- Procurement termination notices now required



Exclusions and debarment lists

- Excluded supplier: mandatory exclusion ground applies to supplier or associated person AND circumstances giving rise to exclusion are continuing and likely to occur again OR supplier or associated person are on the debarment list (s.57(1))
- Excludable supplier: discretionary exclusion ground or on debarment list due to discretionary exclusion ground (s.57(2))
- Debarment lists: duty on contracting authorities to report within 30 days decisions to exclude. Decision to debar ultimately taken by Minister of the Crown following an investigation. Statutory process for debarred bidders to apply to the Court for suspension of entry onto the list (s.63) and for appeals against entry (s.64). Test is “material mistake of law”



Contract management and KPIs under Part 4 of the act: greater regulatory burden

- Payments compliance notices every six months (s.69)
- >30K payment information to be published every quarter (s.70)
- Contract performance assessment every 12 months (s.71).



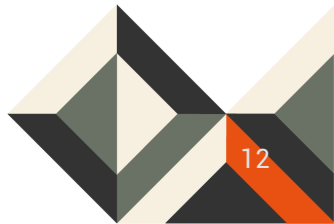
Contract modifications under s.74: still a minefield!

- Permitted modifications, not substantial, or below threshold
- Substantial =
 - +/- 10% maximum term provided for on award
 - Material change to scope (no real change to definition from PCRs)
 - Material change to economic balance (no definition)
- Below threshold:
 - 10% (services), 15% (works) increase or decrease estimated value
 - Below contract threshold
- Known risk modification exemption – see para.5 of Schedule 5.



Modification contract change notices (s.75): VEATs/VTNs now mandatory





- Now mandatory before entering in all instances other than under 10%/15% change to value or term or unless novation/restructure
- Standstill is voluntary however – but in practice sensible to apply!
- 90 days to publish contract as modified or modification (s.77) for over £5m contracts (whether initial or as modified)



Thank you

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