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**What the new EU Public Procurement Directive
means for SMEs: A DCO Overview**

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The New EU Procurement Directives

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Introduction

On 15 January 2014, the European Parliament adopted three new Procurement Directives for public contracts, utilities and concessions which aim to reform the public procurement regime.

While the Directives for utilities and concessions are unlikely to have too great an impact upon UK SMEs directly, the new Public Contracts Directives will significantly impact on the processes, procedures and methodologies of buyers and suppliers alike.

This Directive sees significant changes to timescales and thresholds, the introduction of two new procurement procedures and changes to the selection and award criteria, to name but a few. But what does this all mean and how will it affect your SME?

This Guide aims to explain some of the potential key elements that private sector organisations which provide goods and services to the public sector need to be aware of.

Background: What are EU Directives?

EU Directives form the basis for the legislative systems in member states governing the public sector's procurement of goods and services in the European Union.

Governments have to adapt their laws to meet these goals, but are free to decide how to do so. Directives may concern one or more Member States, or all of them.

Since 1971, various Procurement Directives have been introduced. The most recent substantial change came in 2004 with Public Contracts Directive 2004/18/EC.

The EU procurement regime is about to undergo a massive transformation, with the new Directives bringing about a number of changes to the way public sector procurement operates. The new Directives seek to do this through the clarification and simplification of certain rules and procedures as well as the introduction of new systems.

Having been in development since April 2010, the newly adopted Directives are aimed at achieving greater flexibility, facilitating access to contracts for small and medium-sized companies (SMEs), supporting the strategic use of public procurement for environmental and social policy goals, providing more clarity on the application of the rules, and shifting to full electronic procurement.

After the publication of the new Directives in the Official Journal of the European Union (OJEU), Member States will have 24 months in which to implement the Directives into national law.

The new EU Procurement Directives will be directly applicable in the UK to central government and its agencies, non-departmental public bodies (NDPBs), the wider public sector, local authorities and NHS bodies.

For businesses of all sizes currently working in or seeking to work in any of the above sectors, now is the time to review and revise your tendering procedures in order to be fully prepared as the EU Member States get ready to adopt the new Directives into national law.

Key changes

Although the new regulations have not yet been implemented in the UK, with Member States having two years to implement the underlying Directives into national law, contracting authorities will be starting to prepare the ground now to put these rules into effect.

For suppliers, this means the process of bidding for public contracts should be quicker and less costly, enabling them to compete more effectively.

Some of the main changes introduced in the new Directives are as follows:

Thresholds

Any public sector organisation publishing a contract opportunity over a certain value (threshold) must advertise it in the Official Journal of the European Union – an electronic journal that can be viewed via the Tenders Electronic Daily (TED) website or through services like MOD DCO save you time and money searching for relevant contracts.

While the threshold levels have not undergone substantial revision, there has been a slight change as reflected in the 2014-15 values introduced by Regulation (EU) No 1336/2013 of 13 December 2013.

Public Contracts Regulations 2006 – As of 1 January 2014

	Schedule 1 Listed Authorities	Other Contracting Authorities
Supplies	£111,676 €134,000	£172,514 €207,000
Services	£111,676 €134,000	£172,514 €207,000
Works	£4,322,012 €5,186,000	£4,322,012 €5,186,000

The Utilities Contracts Regulations 2006 and Defence and Security Public Contracts Regulations 2011 refer to certain utility companies operating in the energy, water and transport sectors and defence and security related organisations and authorities respectively. Due to the nature of these industries and marketplaces, there are specific thresholds applicable to them.

Utilities Contracts Regulations 2006 – As of 1 January 2014

All Entities

Supplies	£345,028	€414,000
Services	£345,028	€414,000
Works	£4,322,012	€5,186,000

Defence and Security Public Contracts Regulations 2011 – As of 1 January 2014

All Authorities

Supplies	£345,028	€414,000
Services	£345,028	€414,000
Works	£4,322,012	€5,186,000

Value for money

Due to the new exemplar award criteria introduced for the ‘most economically advantageous tender’ (MEAT), public authorities will be able to put more emphasis on quality, social aspects, innovation and life-cycle costs while still taking into account environmental considerations and price.

This revision of the exemplar award criteria encourages evaluation of those bids offering the best price-to-quality ratio. This should help SMEs being considered for contracts, as firms will be judged not only on the front-end price but also the life-cycle cost.

Innovative solutions

The Directives have also been designed with the aim of encouraging public procurement to be used to “spur innovation”.

The new ‘innovation partnership’ will allow public authorities to call for tenders to deliver a specific requirement that is not already available in the marketplace. This will allow room for the contracting authority and the tenderer to conduct research and development together and create a more specific, needs-based solution for the contract.

No push to privatise public services

The new EU rules on concession contracts stress that Member States remain free to decide how they want public works or services to be performed – in-house or outsourced to private companies. The new Public Contracts Directive, as the text explains, “does not require the privatisation of public enterprises providing services to the public”. In addition, MEPs have acknowledged the special nature of water as a public good and therefore accepted the exclusion of this sector from the scope of the new rules.

Help for mutuals

The UK Government has supported public sector staff to form mutuals. A public service mutual is an organisation which has left the public sector but continues to deliver public services. There are more than 80 mutuals live in the UK delivering well over £1 billion of public services.

Exclusions

One of the more talked-about developments in the latest EU reforms is the ability for a purchaser to exclude a bidder that has performed poorly on a previous public contract.

Other grounds for bidder exclusion include:

- failure to pay taxes or social security contributions
- being party to anti-competitive agreements
- conflicts of interest
- criminality

These exclusions are only permitted in the case of significant or persistent deficiencies in performance of a substantive requirement and should in theory lead to more success for trusted and proficient suppliers.

The Directives and SMEs

SMEs are the backbone of the European economy, being primarily responsible for wealth and economic growth and playing a key role in innovation and R&D. It is estimated that 99% of all EU businesses meet the definition of Small to Medium-sized Enterprise.

In light of this, central to the revised Directives is an attempt to help small and medium-sized enterprises to bid for and win public sector contracts, with wide-ranging changes to the rules now in place to encourage small firms.

Less red tape

Previously, authorities required organisations to provide three years' worth of audited accounts and extensive supporting documentation before being eligible to submit their interest. However, the new Directives will change the system so that businesses only need to support their application once their tender is successful.

The bidding procedure for companies will be simpler, with a standard 'European Single Procurement Document' based on self-declarations, allowing the bidder to demonstrate that they meet the pre-qualification criteria for the contract, that they do not satisfy any of the grounds for exclusion, and that they fulfil the economic or technical selection criteria. Only the winning bidder will have to provide original documentation, which should reduce the administrative burden on companies by an estimated 80%.

Minimum turnover cap

Organisations bidding for contracts need only have a minimum annual turnover of more than two times the estimated contract value, allowing start-ups to enter the process regardless of their size or how long they have been in business.

Timeframes

The new Directives include the shortening of timeframes, which should cut procurement costs and introduce less onerous PQQ requirements.

Lots

Authorities are being encouraged to think about SMEs from the outset in their tender processes and to consider whether contracts can be divided into smaller lots to further support SME participation. The move will also reduce over-reliance on one or a small number of suppliers and increase competition.

Among other measures, contracting authorities will have to explain in their OJEU advertisement why they did not split up the contract into lots in cases where the procurement could have been so divided but has not been (known as the 'apply or explain' principle).

Conclusion

The new EU Public Procurement Directive will have wide-reaching implications for both suppliers and public authorities across Europe. For SMEs, the changes should be positive, delivering greater efficiency and transparency, more competition and a less bureaucratic and more cost-effective tendering process.

Given these changes, now is the time to ensure that your small business is ready to make the most of the opportunities available.

Having visibility of the right opportunities for your business from the start is vital in gaining first-mover competitive advantage, and MOD DCO gives you more opportunities than anyone else.

It all starts with the right opportunities...

Small and medium-sized enterprises are the backbone of the European economy. They make up 99% of businesses and account for approximately 14 million private sector jobs in the UK alone.

As such, the Government is eager to ensure that SMEs are given every possible opportunity to succeed in these tough economic times. With improvements such as those outlined in this Guide helping to open up opportunities for SMEs, the Government hopes to stimulate growth, create jobs and help the UK succeed and prosper in a competitive global economic environment.

In 2011, the Coalition set itself a challenge to award 25% of all Government business to SMEs. This is an ambitious undertaking, and according to the Cabinet Office's most recent report, *Making Government business more accessible to SMEs: Two Years On*, it is one which looks set to be achieved by the 2015 deadline.

In 2009-10, just 6.5% of central government's direct procurement spend went to SMEs. Spending with SMEs has since increased from £3bn in 2009-10 to £4.5bn, a total of 10.5%, in 2012-13.

In addition, new figures provided by major government suppliers indicate that SMEs have benefited from a further £4bn (9.4%) in indirect spend through the supply chain in 2012-13.

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