

After the EU: What we know, what we don't and what we're hoping for

Buyer Briefing 1

To aid buyers across the UK public sector, BiP Solutions' Procurement Advice and Support Service (PASS) is providing access to a range of briefings and webinars specifically relating to procurement, designed to help buyers to navigate the changes and challenges that lie ahead – ensuring that they are able to work effectively, compliantly and responsively in a dynamic and fast-changing environment. To access these resources, [just click here](#).

On 31 December 2020, the Transition period for the United Kingdom ended and we left the EU Single Market and Customs Union.

The UK Government has published a Green Paper '[Transforming Public Procurement](#)' which details many of the changes that they propose to make to the current procurement framework.

At BiP Solutions, we are acutely aware of the bearing that this could have on our clients in the public sector and we plan to keep you informed during 2021 on how this is impacting across the procurement marketplace.

This briefing takes a high level look at what we know is changing, the key proposals in the Green Paper and a few things we hope may come to fruition as the changes are enacted.

Below Threshold Contracts

The UK Government announced in late December that they intend to allow buyers to reserve contracts that fall below the current thresholds in two distinct ways:

- Reserve the procurement by supplier location – this means being able to run a competition and specify that only suppliers located in a particular geographical area can bid. Supplier location should be described by reference to where the supplier is based or established and has substantive business operations and not by location of corporate ownership.
- Reserve the procurement for Small and Medium-sized Enterprises (SMEs) / Voluntary, Community and Social Enterprises (VCSEs) - this means being able to run a competition and specify that only SMEs and VCSEs can bid.

These options must be looked at on a case-by-case basis, and can be exercised on their own or together.

Find a Tender Service (FTS)

FTS is the new UK e-notification service where notices for new procurements above the OJEU value thresholds must now be published in place of the Official Journal of the European Union's Tenders Electronic Daily (OJEU/TED).

From a buyer's perspective there will realistically be no immediate change in what you do.

If you currently use BiP Solutions' eSourcing platform, [Delta](#), then you do not need to do anything extra, as Delta is fully compliant with FTS and has been running parallel publishing to the system for several months.

If you are using another system, then it is important that you seek assurance from your current eSender that they are compliant, or [drop our colleagues on Delta a note](#) and they will get back to you.

New Regulatory Framework

The government regards the current procurement structure for awarding contracts as being too restrictive and wants to implement a new regulatory framework designed to deliver a culture of continuous improvement to support more resilient, diverse and innovative supply chains.

The aim is to speed up and simplify procurement processes, place value for money at their heart, and unleash opportunities for small businesses, charities and social enterprises to innovate in public service delivery.

Key to this will be the removal of up to 350 current regulations and to streamline and simplify the framework of regulations that currently govern public procurement.

The Government proposes consolidating the Public Contract Regulations, the Utilities Contract Regulations, the Concession Contract Regulations and the Defence and Security Public Contract Regulations into a single set of regulations specifically designed for the UK market and priorities.

The new regulatory framework will be founded on the principles and rules set out in the GPA, namely: non-discrimination, transparency and impartiality.

Principles of Public Procurement

A number of principles have been proposed as part of the new regulatory framework:

- Public good – procurement should support the delivery of strategic national priorities including economic, social, ethical, environmental outcomes and public safety.
- Value for money – procurement should enable the optimal whole-life blend of economy, efficiency and effectiveness that achieves the intended outcome of the business case.
- Transparency – openness that underpins accountability for public money, anticorruption, and the effectiveness of procurements.
- Integrity – good management, prevention of misconduct, and control in order to prevent fraud and corruption.
- Fair treatment of suppliers – decision-making by contracting authorities should be impartial and without conflict of interest.
- Non-discrimination – decision-making by contracting authorities should not be discriminatory.

National Procurement Policy Statement

To ensure that the procurement process itself scrutinises suppliers' methods adequately and reflects the requirement to deliver the full range of benefits in each contract, the Government will separately set out plans to legislate to require contracting authorities to have regard to national priorities of strategic importance in public procurement.

These priorities will be published in a National Procurement Policy Statement and will include:

- delivering social value including economic, social and environmental outcomes;
- commercial delivery including publishing pipelines of future procurement;
- commercial capability including benchmarking performance.

New Procurement Procedures

There is a proposal to make significant changes to the current procurement procedures and replace them with three simple procedures:

- a new flexible procedure that gives buyers freedom to negotiate and innovate to get the best from the private, charity and social enterprise sectors.
- an open procedure that buyers can use for simpler, 'off the shelf' competitions.
- a limited tendering procedure that buyers can use in certain circumstances, such as in crisis or extreme urgency.

Light Touch Regime

The government wants to remove the current Light Touch Regime as a separate process and apply the rules applicable to other contracts to services currently subject to this regime.

Supplier Registration

To try and make bidding for contracts simpler, it has been proposed to develop a single digital platform for supplier registration that ensures suppliers will only have to submit their data once to qualify for any public procurement.

Dynamic Purchasing Systems

There is a proposal to introduce a new commercial tool, a DPS+, to replace the current DPS and Qualification System (Utilities use this), which will be a form of GPA multi-use list.

The DPS+ will be a flexible, highly commercial tool ideally suited to providers of agile online and other dynamic marketplaces.

New suppliers will be able to join at any time with no maximum duration.

Procurements could be undertaken within a DPS+ using the new competitive flexible procedure.

And the DPS+ could be used for all types of procurement, not just common goods and services.

Framework Agreements

To increase the innovation currently stifled by the limited flexibility offered in frameworks, the Government proposes to introduce a new option that allows for a longer maximum term and for the framework to be open for new suppliers to join at defined points.

Contract Notices

There will be a requirement to publish contract amendment notices, so that amendments are transparent. This will provide authorities with greater certainty over the risk of legal challenge. It may also become mandatory to publish a notice when a decision is made to use the limited tendering procedure.

Legal Review

As we indicated in previous briefings, the Government intends to reform the process for suppliers to challenge procurement decisions, with the aim of speeding up the review system and make it more accessible. To support this, the aim is to focus redress onto pre-contractual measures and to cap the level of damages available to suppliers, thereby reducing the attractiveness of speculative claims.

Publication of Commercial Pipelines

Contracting authorities will be expected to publish annual pipelines of their planned procurements and commercial activity, looking forward at least 18 months. This is intended to provide greater transparency on what they plan to do in the future.

Debarment List

The Government plans to look at the feasibility of developing a debarment list of suppliers, (which may include, where relevant, their related entities) that have relevant convictions to make it easier for contracting authorities to identify organisations that must be excluded from public procurement.

In this first Briefing we have merely scratched the surface of the potential shape of procurement in the future.

In future Briefings, we will delve more deeply into these and other areas and consider the benefits, pitfalls and practicality of the proposed changes for buyers.

You can also sign up for our webinar '[After the EU: What we know, what we don't and what we're hoping for](#)' which takes place on 27 January at 11am.

If you would like to discuss any of the issues in this Briefing, or any other aspects of procurement, our PASS consultants are available to assist you with any aspect of procurement-related questions that you may have.

If you need further support, [fill in our enquiry form](#) or call us on 0141 270 7666.

For further information on all PASS services, [simply visit our website](#).

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