

Commission publishes first proposals for new procurement directives

We have selected our top ten points to watch out for in the Commission's proposals which were published on 20 December. Whilst the final proposals are not due to be published until the end of 2012, we believe these headline points represent the key issues which contracting authorities and utilities should be aware of.

We will monitor and report on the progress of these proposals. If you have any questions then please contact a member of our team.

Proposed Public Procurement Directive

1. No distinction between Part A and Part B services

The removal of this distinction means that most service contracts currently treated as Part B will in future be subject to the full regime.

2. New rules for social services

In recognition of their specific characteristics, the revised Directive introduces separate rules for tenders concerning social, health and education services. Authorities will only be required to tender service contracts valued in excess of €500,000. The tender would not need to comply with the detailed procedural requirements in the Directive but must be conducted in accordance with the Treaty Principles of fairness, transparency and non-discrimination.

3. Explicit recognition of "in-house" and other co-operation agreements

The *Teckal* case-law permitting authorities to award contracts to in-house bodies without conducting a full procurement has now been formally recognised and codified. Other forms of co-operation agreements between local authorities will also be excluded from the tendering requirements in the Directive if they meet certain conditions.

4. The new competitive negotiated procedure

The negotiated procedure has been modified to ensure safeguards against discrimination and unfair treatment are observed.

5. Relaxation of the rules governing the use of the negotiated procedure and competitive dialogue

The conditions for the use of both these procedures



will be relaxed in order to permit negotiations in a wide range of situations where, for example the open or restricted procedures "are not likely to lead to satisfactory procurement outcomes." Greater use of the competitive dialogue procedure will also be permitted.

6. Simplified procedures for authorities outside central government

Contracting authorities outside central government (including local authorities) will benefit from relaxed rules regarding the publication of contract notices and the application of time limits if a prior information notice is used.

7. Detailed rules on modification of contracts

New provisions will define the concept of a prohibited "Substantial Modification". This will clarify the principles first set out by the EU Courts in *Presstext*.

8. Measures to improve access to the market for SMEs

Support for SMEs would be provided in the form of encouraging the division of large contracts into "Lots" and prohibiting authorities from requiring minimum turnover levels that would exceed three times the contract value.

Proposed Utility Directive

9. Definition of special and exclusive rights

The definition of "special and exclusive rights" has been refined to exclude rights granted through a procedure subject to adequate publicity based on objective criteria.

10. Proposed Directive on the award of concession contracts

Case law on the award of service and works concessions has now been codified so authorities must conduct transparent and fair competitions for concessions valued in excess of €5,000,000. However, the new Directive does not require authorities to follow any specific award procedures. The current proposal does not contain significant detail so it will be interesting to see how this Directive evolves.



Contact

For further information please contact:



John Houlden
Partner

+44(0)117 902 2796
john.houlden@burges-salmon.com



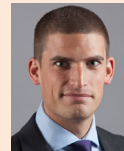
Tim Heywood
Director

+44(0)117 307 6971
tim.heywood@burges-salmon.com



Stephanie Rickard
Senior Associate

+44(0)117 902 6682
stephanie.rickard@burges-salmon.com



Patrick Parkin
Solicitor

+44(0)117 307 6959
patrick.parkin@burges-salmon.com



Tim Riisager
Solicitor

+44(0)117 307 6877
tim.riisager@burges-salmon.com

Links

Proposed public procurement directive:

http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/COM2011_896_en.pdf

Proposed utilities directive:

http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/COM2011_895_en.pdf

Proposed concession directive

http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/COM2011_897_en.pdf

Burges Salmon LLP, One Glass Wharf, Bristol BS2 0ZX Tel: +44 (0) 117 939 2000 Fax: +44 (0) 117 902 4400
Chancery Exchange, 10 Furnal Street, London EC4A 1AB Tel: +44 (0) 20 7685 1200 Fax: +44 (0) 20 7685 1266

www.burges-salmon.com

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