



Procurement Alert

New time limits for challenging procurement decisions

September 2011

Introduction

The Government has made amendments to the Public Contracts Regulations 2006 (the "PCR"); Utilities Contracts Regulations 2006 and the Defence and Security Public Contracts Regulations 2011 (the "Regulations").

The amendments can be found in the Public Procurement (Miscellaneous Amendments) Regulations 2011 (SI 2011/2053) (the "Amendment Regulations").

This Alert focuses on the changes to the PCR.

Commencement and Application of the Amendment Regulations

- The Amendment Regulations come into force on 1 October 2011.
- However, the old rules on time-limits for commencing challenges will continue to apply where the date of knowledge of the alleged breach arose before 1 October 2011.

In summary, the key practical implications of the Amendment Regulations are:

1. procurement challengers must ordinarily start proceedings within **thirty days** of knowledge of the breach;
2. proceedings are 'started' when a claim form is **issued** and has been served on the defendant within **seven days**;
3. contract signature will be suspended when the defendant becomes aware of the claim form being issued; and
4. contracting authorities will not in future be required to send Standstill Notices to all tenderers.

New time-limits for challenging a procurement

- The Amendment Regulations state that challengers must start proceedings within **thirty days** (or the first working day thereafter) beginning with the date on which the challenging party first knew or ought to have known that grounds for challenge had arisen. This significantly reduces the previous time limit of three months.
- The Courts may extend this limit up to a maximum of three months where it considers there is a good reason for doing so.

- Proceedings are 'started' when the challenger **issues** the claim form, not when the defendant is served with the claim form. However, the claim form must be served within seven days of it being issued.
- This change arises from the decision in *Uniplex (C-406/08)* previously reported on.

Automatic suspension of contract signature

- The automatic suspension of a contracting authority's ability to sign a contract will now be triggered when the contracting authority becomes aware of a claim form being issued and that it relates to that contract.

Standstill Periods

- Contracting authorities are only required to send Standstill Notices to tenderers who have not been 'definitively excluded'.
- A tenderer has been 'definitively excluded' where they were excluded prior to award stage and a further period of three months has expired without the exclusion being challenged.

Miscellaneous Amendments

- Similar provisions have been made for Scotland.
- The Amendment Regulations also update the offences for which a tenderer must be rejected; introduce provisions for the transfer of the responsibility for public procurement from the OGC to the Cabinet Office and replace references to the EC Treaty with the appropriate references to the TFEU.

Comment

The substantive changes will require contracting authorities to modify their internal procedures for public procurements.

In addition it is likely that bidders will need to revise their overall approach to enforcing their rights and remedies given the pressure to take decisions earlier. As a result we might see more challenges before the award decision. Will clarification questions focus more on pure compliance issues?

If you would like to discuss how best to respond to these changes please contact a member of our specialist procurement team, shown overleaf.

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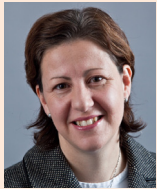
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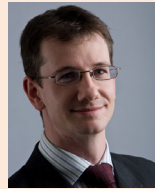
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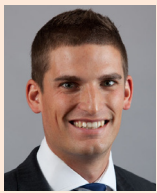
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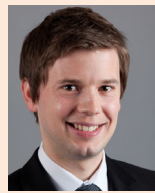
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