



## Impact of New EU Procurement Directives on Wales

The new Directives are welcome and will help to deliver the Welsh Government's wider policy objectives and strengthen adoption of the Wales Procurement Policy Statement (WPPS).

### Top 10 Changes

Many of the new rules are in line with existing Welsh Government policy and practice, below is a summary of the top ten changes and how they link with our key policy areas and WPPS:-

#### 1. Community Benefits (WPPS principle 4)

Our existing Community Benefits policy will be further strengthened under the new Directives with new provisions specifically allowing the inclusion of social considerations in award criterion and contract performance conditions:-

- Characteristics relating to working conditions can be specified eg on-site vocational training, recruitment of long-term job-seekers and training measures for unemployed / youths.
- Contract performance conditions can also include employment conditions, compliance with International Labour Organisation (ILO) Conventions, recruiting disadvantaged persons.

#### 2. Open, Accessible Competition (WPPS principle 5)

The new rules support our work to make it easier for smaller suppliers and third sector firms to bid and increase access to public contracts, specifically:-

- New provision to limit the number of lots suppliers can bid for.
- Limitation on requirements for bidding to open up opportunities to small firms.
- Capping of turnover requirements to 2 x contract value so as not to preclude smaller firms at selection stage through disproportionate requirements.
- Can ask tenderers for indication of % sub-contracting.
- New provision for direct payment of sub-contractors – in line with PBA policy.
- Conditions for joint bidding must be proportionate so as not to discriminate against consortia bids.
- Simplified rules on DPS allowing greater access for new suppliers.

### **3. Simplified Standard Processes (WPPS principle 6)**

The new rules simplify the selection process and require a proportionate approach which is line with SQulD:-

- New duties of proportionality and transparency align with SQulD approach.
- Acceptance of self-declarations so less paperwork and red tape for suppliers.
- Suppliers must have opportunity to 'self-clean' in line with blacklisting approach.
- Use of e-Certis or similar system hosting pre-qualification information.

### **4. Electronic Procurement & Timescales (WPPS principle 6)**

Electronic procurement is mandated and timescales reduced, helping to promote the work of the eProcurement Service (ePS) e-tendering tools and use of Sell2Wales:-

- E-procurement will be mandated within thirty months of transposition.
- Suppliers must have electronic access to procurement documents.
- Timescales reduced by around a third to speed up procurement.

### **5. Supplier Engagement & Innovation (WPPS principle 8)**

Welcome new provisions on increasing dialogue with suppliers should hopefully break the traditional view of needing to keep suppliers at arms' length, specifically:-

- New procedures eg Innovation Partnership and competitive procedure with negotiation and new award criterion of "innovative aspects".
- New provisions on pre-procurement engagement with suppliers to increase dialogue and enhance outcome based specifications.
- Acceptance of variant bids to encourage new ideas / innovative offerings.

### **6. Reserving Contracts – Stronger Provisions**

- Contracts can be reserved for suppliers whose main aim is the social and professional integration of disabled or disadvantaged persons.
- The percentage of workers to be disabled or disadvantaged in order to qualify for this provision has decreased from 50% to 30% thus widening the scope.

### **7. Temporary Exemption for Public Service Mutuals**

Allowing new mutuals / employee-led organisations to become established and gain experience before being fully exposed to EU-wide competition.

### **8. Improving Quality of Bids**

Several new provisions will help ensure higher quality of bids and suppliers:-

- Past performance of suppliers can be taken into account and deficient suppliers excluded to ensure business is not done with ineffective suppliers.
- New provision for rejecting abnormally low bids if certain conditions not met.
- Legal clarity that skills and experience can be considered at award AND selection stage to increase quality of service provision.

## **9. New Lighter Regime / New Rules for Social Services**

The distinction between Part A and B services will be abolished to open up cross border trade, should increase scope of Welsh suppliers' opportunities in Europe, also:-

- New rules for social care, education and health will improve flexibility meaning Authorities have discretion to select service providers that best suit their needs.
- Lighter regime for certain services eg legal, hotel and restaurant, security services, certain manpower and agency staff services so more flexibility.

## **10. New Reporting and Governance Requirements**

- For all frameworks & DPS covered by Directives, contract authorities must complete written report providing various tender details and decisions.
- Documentation must be kept for at least 3 years
- Report must be sent to Commission or relevant national body upon request.
- Governance requirements on Member States.