



**Briefing 15-14      March 2015**

## **Public Procurement: A Consultation on Changes to the Public Procurement Rules in Scotland**

To: All Chief Executives, Main Contacts and APSE Contacts in Scotland

For information only to England, Northern Ireland and Wales

### **Key Issues:**

The purpose of this briefing is to advise APSE members on the release of 'Public Procurement: A Consultation on Changes to the Public Procurement Rules in Scotland'.

The consultation will run until 30<sup>th</sup> April 2015 and all responses should be sent to [ScottishProcureConsultation@scotland.gsi.gov.uk](mailto:ScottishProcureConsultation@scotland.gsi.gov.uk)

This briefing includes information on:-

- The consultation
- The European legislative background including the new Public Procurement Directive

### **1.0 Introduction**

The EU has recently concentrated its efforts on amending a number of procurement directives including the new EU Public Procurement Directive, a new Utilities Directive and a new Concessions Directive. As a result of this EU member states are required, to implement

the new Directives into domestic legislation, which means that Scotland must also ensure it is compliant with the new Directives by April 2016. This briefing primarily concerns the consultation and measures introduced under the new Public Procurement Directive.

Accordingly the Scottish Government have issued a report and consultation on the new Directives and are inviting responses to their proposals. The consultation can be found on the Scottish Government website together with a form for submitting responses to the consultation at [www.gov.scot/consultations](http://www.gov.scot/consultations).

## **2. What issues are raised in the Consultation?**

The implementation proposals include the introduction of number of new measures and procurement procedures. One such measure is the use of the “most economically advantageous tender” - known as the MEAT criteria - which supports the use of a more balanced approach to decisions to award contracts, taking into account factors other than price and life-cycle-costs, such as environmental and social factors. APSE has long advocated the use of MEAT criteria as a means of ensuring public procurement by local authorities provides much wider social, employment and environmental benefits gaining better value for the public pound.

The new EU Directive also allows for a number of new procedural changes to the way in which procurement rules operate including for example the development of "Innovation Partnership" which is a new procedure that will allow tenders to be submitted to solve a particular problem without pre-empting how they would like the problem to be solved, allowing the contracting authority and tenderer to produce a tailored innovative solution together. Whilst it is important to continuously review procurement processes and ensure that they are agile enough to meet local needs this must in APSE's view be balanced by the need for openness and transparency and ensure that procurement decisions are robust and defensible and led by the local authority as buyer rather than becoming a seller's market.

Further changes also include having less red tape for bidders, easier access for smaller companies, tougher rules on subcontracting and the consultation report also emphasises that the new rules are not a push to further routes to privatisation. Interestingly the Scottish Governments' approach does not appear to support special treatment for reserved contracts for certain categories of bidders in certain services, which is markedly different to the approach taken by Westminster; for English authorities a regulatory SI has recently set out quite specific exemptions for certain social and personal care type contracts designed to allow these to be reserved on a limited basis to coops or mutuals. This is now the subject of an Early Day Motion calling for its annulment and these developments highlight a significant divergence in policy terms within Scotland.

The Scottish Government website have provided frequently asked questions sections on the revision of public procurement directives and the directive on concession contracts if you require any more information on the European legislative background.

### **3. Further issues**

There are some discretionary elements of the Directives that allow the Scottish Government to make choices about how to and whether to implement further changes, therefore the Government has released a consultation document to gather views on these choices. There will also be a separate Scottish Government consultation on e-invoicing in public procurement at a later date.

Since around £10 billion is spent annually by public bodies in Scotland buying goods, services and works, it is clear that public procurement is a significant lever to help support economic growth. Improving supplier access to public contracts and spending that money in a way that can make significant improvements to local economies, by taking into account wider social, environmental and employment issues; this could help to provide a number of benefits over some existing approaches. APSE research has provided evidence of the

economic benefits of good procurement practice in a number of research papers including *'More bang for the public buck: A guide to using procurement to achieve community benefits'*

[APSE / CLES February 2010]

As EU member states are permitted, within certain limits, some freedoms as to how and whether certain policies are implemented, this consultation provides an opportunity for local authorities to respond to the principles set out by the Scottish Government. The consultation therefore aims to gather responses that will inform the development of the new draft Scottish Regulations. APSE would encourage local authorities to therefore respond. APSE would equally welcome the views of our member authorities within Scotland and comments may be submitted to Louise McMillan, Principal Advisor for Scotland on [lmcmillan@apse.org.uk](mailto:lmcmillan@apse.org.uk)

For ease of reference the Scottish Government consultation on public procurement is available online [here](#) and will run until 30 April 2015.

APSE will continue to keep members updated on any further developments in public procurement.

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