



# LHC

## Building Maintenance and Housing: Procurement Update

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Trusted procurement for  
better buildings and homes



**DON'T LET THE REGULATIONS  
GET IN THE WAY**

## Why Procurement Regulations?

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# The Basis of European Procurement Regulation



## The Treaty of Rome 25 March 1957

HIS MAJESTY THE KING OF THE BELGIANS

THE PRESIDENT OF THE FEDERAL REPUBLIC OF GERMANY

THE PRESIDENT OF THE FRENCH REPUBLIC

THE PRESIDENT OF THE ITALIAN REPUBLIC

HER ROYAL HIGHNESS THE GRAND DUCHESS OF LUXEMBOURG

HER MAJESTY THE QUEEN OF THE NETHERLANDS

## Why Procurement Regulations?

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# The Basis of European Procurement Regulation

## The Treaty of Rome 25 March 1957

**DETERMINED** to lay the foundations of an ever-closer union among the peoples of Europe,

**RESOLVED** to ensure the economic and social progress of their countries by common action to eliminate the barriers which divide Europe,

**AFFIRMING** as the essential objective of their efforts the constant improvement of the living and working conditions of their peoples,

**RECOGNISING** that the removal of existing obstacles calls for concerted action in order to guarantee steady expansion, balanced trade and fair competition,

**ANXIOUS** to strengthen the unity of their economies and to ensure their harmonious development by reducing the differences existing between the various regions and the backwardness of the less favoured regions,

## Why Procurement Regulations?

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# The Basis of European Procurement Regulation

## The Treaty of Rome 25 March 1957

**DESIRING** to contribute, by means of a common commercial policy, to the progressive abolition of restrictions on international trade,

**INTENDING** to confirm the solidarity which binds Europe and the overseas countries and desiring to ensure the development of their prosperity, in accordance with the principles of the Charter of the United Nations,

**RESOLVED** by thus pooling their resources to preserve and strengthen peace and liberty, and calling upon the other peoples of Europe who share their ideal to join in their efforts,

**HAVE DECIDED** to create a European Economic Community and to this end have designated as their Plenipotentiaries:

## The Four Freedoms

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### ➤ Free movement of:

- Goods
- Capital
- Services
- People

### ➤ Prohibited trade barriers across EU states

### ➤ And ....

### Regulate Public Undertakings

➤ Directives introduced in 60s, 70s and 80s largely ineffective:

- Prohibitive
- Non-regulatory
- No rules

➤ To address this ....

## Regulate Public Undertakings

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- **Directive 2004/18 "Public Sector Directive"**
  - did set out common rules
  - did replace national regulations
- **Public Contracts Regulations 2006**
- **Remedies Directive 2007**
- **Public Contracts (amendment) Regulations 2009**



## Regulate Public Undertakings

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### ➤ Public Procurement was to be:

- Open
- Fair
- Transparent
- Non-discriminatory

## Regulate Public Undertakings

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### ➤ However, it was also:

- **Long-winded** (long timescales and PQQ)
- **Complicated** (trip hazards for procurers and tenderers)
- **Litigious** (open to challenge, leading to culture of risk averseness)
- **Anti-SME** (leading to big companies sweeping up)
- **Anti- local** (leading to national companies being imposed on customers)

So.....

## Regulate Public Undertakings

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### ➤ Directive 2014/24 Public Procurement

- Required to be enacted by 16 Apr 2016
- UK Consultation 19 Sep – 17 Oct 2014
- UK Consultation Report 30 Jan 2015

### ➤ Public Contracts Regulations 2015

- UK Enactment 26 Feb 2015
- First guidance issued 27 Feb 2015

## Regulate Public Undertakings

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### ➤ Public Procurement will still be:

- Open
- Fair
- Transparent
- Non-discriminatory

*and*

- Proportionate

## Regulate Public Undertakings

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### ➤ However, it will also be:

- **Less long-winded** (reduced timescales)
- **Less complicated** (case law and guidance now built in)
- **Possibly less litigious** (clearer guidance)
- **Pro-SME** (breaking into Lots, turnover cap)
- **Pro-local** (community benefits)

## Improving Procurement Practices

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### ➤ Encouraging SMEs by

- Reducing 'red tape'
- Breaking down contracts into Lots
- Introducing 30 day payment terms
- Abandoning PQQ's for lower threshold procurements
- Greater competition and greater savings, without compromising quality.

## Improving Procurement Practices

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### ➤ Use of Centralised Purchasing Bodies:

- Use pre-tendered frameworks
- Greater collaboration, with benefits of cost and resource efficiencies
- Use other purchasing activities

### ➤ What are frameworks?

“framework agreement means an agreement between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged”



## Improving Procurement Practices

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### ➤ Pre-Tender Engagement:

- Pre-tender engagement is encouraged
- Production of better specifications, taking into account the views of the market
- Warning: Ensure no conflict of interest by pre-tender engagement

### ➤ **Modification of Contracts During Their Term:**

- Allowing replacement contractors/suppliers on restructuring
- Modification of contract terms
- Include termination clauses
- Allow greater flexibility

# Improving Procurement Practices

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## ➤ Exclusion:

- Allowing exclusion on the basis of past persistent failures in performance that resulted in:
  - early termination, damages or similar (warning)
- Allowing exclusion of a contractor/supplier who falls foul of the exclusion criteria during the term of a framework or contract.

## Improving Procurement Practices

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### ➤ Local Benefits:

- Training (Apprenticeships and training requirements)
- Employment (Employment and long-term recruitment of local operatives)
- Tier 1 Contractors' engagement with SMEs and 3rd Sector
- Investment in a local community and its longer-term regeneration
- Environmental (Waste, sustainability)

**Proportionate and relevant to the procurement**

## Improving Procurement Practices

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### ➤ Below EU Threshold Procurements:

- Above £25,000 for goods and services above £2m works
- New lighter non-PQQ regime for below threshold contracts
- Must advertise opportunity in Contracts Finder but
- May not need to do so if purchasing through Pre-tendered Framework

*although*

- Need to advertise Call-off Award in Contracts Finder

## Improving Procurement Practices

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### ➤ Above threshold (£4.1m works, £173k services/supplies):

- Advertise in Official Journal of EU (OJEU) and conduct OJEU compliant tender or
- Use a suitable OJEU compliant framework

## Improving Procurement Practices

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- 1. Restricted Procedure**
- 2. Open Procedure**
- 3. Competitive procedure with negotiation**
- 4. Competitive dialogue**
- 5. Innovation Partnership**

## Improving Procurement Practices

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### ➤ Award based on:

- Most Economically Advantageous Tender (MEAT)
- Pre-declared criteria, weightings and scoring mechanism

### ➤ Abolition of award to lowest tender *but*

- UK allows 100% Price : 0% Quality
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## Improving Procurement Practices

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### ➤ In summary:

- **Less long-winded** (reduced timescales)
- **Less complicated** (case law and guidance now built in)
- **Possibly less litigious** (clearer guidance)
- **Pro-SME** (breaking into Lots, turnover cap)
- **Pro-local** (community benefits)

**Greater competition and greater savings, without compromising quality**

**DON'T LET THE REGULATIONS  
GET IN THE WAY OF WHAT YOU WANT**

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