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Green Paper
Transforming Public Procurement
Some takeaways for Local Government

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Chapter 1: Introduction of new key principles

- Standouts for LG: Public Good and Value for Money
- National Procurement Policy Statement:
 - More direction for LG?
 - How must it be followed?
- New oversight body:
 - Monitoring power
 - Intervention power to drive up standards
 - NOT for challenges
- Will this make procurers even more risk adverse?



Chapter 2: Simplification

- Merger of Regulations
- Simpler format with core rules and then “sector” specific parts
- Tough job for drafters but sensible and useful for LG more use of concessions?



Chapter 3: Procurement procedures

- In the current PCRs 7 identifiable procedures, many of which are not used with any regularity
- Suggestion to move to 3:
 - Open
 - Competitive Flexible procedure
 - Similar to LTR
 - Limited tendering procedure
 - Similar to NPWPP
 - Crisis
 - More obligations around transparency and standstill
- Will behaviours change?



Chapter 4: Selection and award

- Proposing to replace MEAT with MAT test with MAT being in line with the Government Procurement Agreement (GPA).
- Intention is to retain basic requirement that, in the main, award criteria must be linked to the subject matter of the contract
- Some new exclusion grounds (fraud, deferred prosecution agreements)
- Central debarment list
 - Caused some concern with bidders
 - Logistically challenging
 - Criteria for getting on and off will be carefully scrutinised
 - LG may face pressure from suppliers
- Exclusion for past poor performance
- Central KPI reporting



Chapter 5: Revised approach to DPS and Frameworks

- New DPS+ for all types of contracts
- 2 types of Framework
 - Closed, similar to current situation
 - Open: has substantial differences to current regime
 - Can run for a term of up to 8 years
 - New providers will be able to join the framework at predetermined points
 - Existing suppliers will have opportunity to submit new bids when framework reopened
 - Where there is a cap on numbers existing suppliers will be evaluated alongside new applicants on any re-opening
- Nothing specifically to deal with construction specific issues like early engagement



Chapter 6: Open and transparent contracting

- Greater emphasis on transparency with obligation on publication of a lot of information at the same time as award notice no award until information is provided
- Release of information consistent with FOIA type principles
- CAs will be required to publish all data in format compliant with Open Contracting Data Standard (OCDS)
- Alignment with OCDS will mean a new set of procurement notices
- Notable that a lot of reforms in the paper relate to establishment of new central platform
 - A requirement that CA systems are capable of sending relevant data to Government's central platform
 - Central debarment list
 - National procurement pipeline
 - Platform will also require CAs to keep a register of complaints and legal challenges (which is likely to be controversial!)
- Unintended consequences?



Chapter 7: Access to Justice

- A tailored fast track system to allow for procurement matters to be dealt with on an expedited basis
- Certain categories of challenge to be dealt with on paper only submissions
- Introduction of new guidance and rules on disclosure
- Reform is focused on pre-contractual remedies being the norm due to the fact procurement cases will be heard quicker. Preference for this is actually going to be stated in the amending legislation
- Subject to some exceptions, proposing that any award for damages will be capped at legal fees plus 1.5 x bid costs.
 - Is this what bidders want? Do they speculatively challenge?
 - Does this remove a motivation for good procurement early settlement
 - How do you calculate bid costs?
- Tougher test for lifting the automatic suspension



Chapter 8: Modification

- Key changes to this being suggested are:
 - Amending Regulation 72 to allow more flexibility to modify contracts including in times of crisis or extreme urgency (to mirror the proposed changes to direct awards)
 - Revising the wording of regulation 72 to make it easier to follow
 - Mandating the publication of contract modification notices in all but a limited number of circumstances
 - Unless a modification has been driven by extreme urgency or a crisis, then a ten day standstill period will apply to all modifications.
- Government seeking to impose legislative cap on level of profit suppliers can make under contract which is extended as a result of a new award procedure being suspended.



So what is missing?

- Nothing really on regeneration contracts, is the new flexible procedure enough?
- Nothing on Public to public
- Abnormally low tenders
- Codification or modification of existing case law?





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