

Procurement alert **January 2009**

EC relaxes use of the accelerated restricted procedure

Contracting authorities that are involved in major public projects over the next 24 months need to review their procurement arrangements following an announcement from the European Commission on 19 December 2008.

The Commission has stated that, in view of the exceptional nature of the current economic situation, it is relaxing the rules on the use of the accelerated restricted award procedure, in order to support Member States' economic recovery through rapid execution of major public investment projects.

For the whole of 2009 and 2010, it will permit much wider use of the accelerated restricted procedure by presuming that its use is justified for all 'major public projects' during that period. This can reduce the timetable to 30 days where an electronic contract notice has been used.

The accelerated restricted procedure allows for tendering to be undertaken using much shorter timescales than those usually required under the standard restricted procedure. Under the normal restricted procedure the contracting authority must allow, as a minimum:

- 37 clear days from despatch of the OJ notice to return of expressions of interest (or 30 clear days if the OJ notice is sent electronically); and then
- 40 clear days from despatch of the invitation to tender to return of tenders (or 35 clear days if carried out electronically).

In addition, a 10 day standstill period must also be allowed between the decision to award the contract and signing of the contract.

Regulation 16 of the Public Contracts Regulations 2006 provides for these time limits to be reduced where compliance with the usual minimum periods are "rendered impractical for reasons of urgency", and these reasons must be stated in the OJ advertisement. This accelerated procedure reduces the minimum timescales to:

- 15 clear days from despatch of the OJ notice to return of expressions of interest (or 10 clear days if the OJ notice is sent electronically); and then
- 10 clear days from despatch of the invitation to tender to return of tenders.

Note that the 10 day standstill period still applies to an accelerated restricted procedure and must therefore be built into the timetable.

There is little case law on what justification is required for the use of the accelerated restricted procedure but it is clear that normally it is for the contracting authority to defend its decision to use the procedure. The Commission's statement means that this onus is removed and there will be a presumption of urgency for all major public projects during 2009 and 2010.

It may still be prudent to identify and record for audit purposes specific reasons for urgency in case there is a challenge to the presumption.

The Commission's statement refers only to the accelerated restricted procedure but it is possible that further concessions or waivers may emerge over the coming months.

Of course the restricted procedure is by no means the default procedure for many 'major projects', so its impact may be fairly limited but this is certainly a welcome concession and one which procurers will want to factor into their forthcoming plans.

Please contact a member of our specialist Procurement Team if you would like tailored advice on any of the issues raised in this Alert:



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