



Changes Expected in the Field of Defence Procurement

On 6 December 2021 the Cabinet Office published its response to its consultation on “Transforming Public Procurement”.

For Defence procurement, this will bring significant change that suppliers will need to be aware of:

- There will no longer be a separate set of regulations relating to defence procurement. The Defence and Security Public Contracts Regulations 2011 will be revoked and defence procurement will be brought under one umbrella of a single set of regulations governing all public procurement.
- The uniform set of rules will be supplemented with specific provisions regarding security and the national interest for the defence sector.
- It remains to be seen how this will fit with the proposed review of the Single Source contract regulatory framework, which was planned for 2021.
- Under the new consolidated set of regulations, there will be only three different procedures for the MOD to choose from when running a procurement – a new flexible procedure, an open procedure for “off the shelf” competitions and a limited procedure for use only in exceptional circumstances (e.g. exceptional urgency).
- In keeping with the SME agenda, the government will establish a single digital platform so that suppliers only have to submit data once to qualify for any procurement, and greater use of continuously “open” dynamic purchasing systems will be encouraged for all types of procurement for goods and services.
- In terms of choosing who to contract with, the MOD will be able to take greater account of past performance in the delivery of previous public contracts.
- Separately, the government intends to make it mandatory for all contracting authorities to have regard to a National Procurement Policy Statement which will include delivering social value through economic, social and environmental outcomes. This includes creating new business, jobs and skills in the UK and improving supplier diversity and resilience.
- The process for challenging breaches of public procurement law is intended to be expedited and streamlined, with a dedicated procurement judge in the Technology and Construction Court and a focus on resolving claims whilst the automatic suspension is still in place.

It is anticipated that the Ministry of Defence will consult as required on the specific defence and security-related elements proposed for the new Regulations.

How we can help

We are a nationally recognised team specialising in public procurement law and procurement litigation. We would be happy to talk to you further to discuss how we can help your organisation prepare for and adapt to the proposed changes. This might include:

- An informal discussion with you
- Training for you or your team
- A workshop

Depending on your requirements, this may well be something that we are able to offer free of charge.

Please do not hesitate to contact us if you require any further assistance.



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By far Bevan Brittan is the most flexible, pragmatic, skilled and reliable legal firm I have worked with.

Chambers UK, 2022