



## Reform of UK Public Procurement Law

### Impact on the Waste and Resource Management Sector

**On 6 December 2021 the Cabinet Office published its response to the consultation on proposals for wide-ranging reform to the regulation of public procurement. The response paves the way for the Procurement Bill which will set out a new framework for the regulation of public procurement and replace the Public Contracts Regulations 2015, the Concessions Contracts Regulations 2016 and the Utilities Contracts Regulations 2016. It is envisaged that the Procurement Bill will become law in 2023.**

For procurement of services in the waste and resource management sector, these reforms will bring significant change that suppliers will need to be aware of:

- There will be only three different procedures for contracting authorities/utilities 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).
- There will no longer be a separate set of regulations relating to the procurement of public concession opportunities. The Concessions Contracts Regulations 2016 will be revoked and brought under one umbrella of a single set of regulations governing all regulated procurement.
- There will two types of framework – “open” and “closed”. Open frameworks can last for up to eight years but must be re-opened to the admission of new suppliers within the first five years. Contracting authorities will be permitted to impose proportionate charges on suppliers reflecting the maximum estimated value of a call-off contract. Greater clarity will be required regarding the nature, scope and value of contracts that may be awarded under frameworks.
- The legislation will aim to clarify the situations in which a public contract can be varied post-award, with options being considered for a “safe harbour” for changes required as a result of developments outside of the contracting authority’s control in complex procurements. Contract amendment notices will be required to be published when any change to a public contract is made, allowing better transparency for providers of post-award events.

- In terms of choosing who to contract with, contracting authorities/utilities will be able to take greater account of past performance in the delivery of previous public contracts with the threshold for being able to exclude providers lowered. Further, the ability to exclude bidders for specific actions will be broadened to cover the actions of individuals or entities with whom the bidder has a close connection.
- In keeping with the SME agenda, the government will establish a central digital platform so that suppliers only have to submit data once to qualify for any procurement. It is intended that the platform will be free to use.
- Contracting authorities/utilities could be required to take into account specific award criteria that are not directly linked to the subject matter of the procurement in order to reflect policy priorities. This continues an increasing trend of central government using public procurement as a facilitator of policy change – for example through the Social Value Model that already requires all central government contracting authorities to incorporate social value into their evaluation models (with a weighting of at least 10%).
- 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 an intention to focus on pre-contract remedies rather than damages. The disclosure of key evaluation documents (i.e. the evaluators' scoresheets) will be frontloaded to accompany the contract award notices, giving bidders more information from the outset to determine whether there are grounds for challenge.

## How We Can Help

We are a nationally recognised team specialising in public procurement law and 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 teams
- 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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