



More flexible choice of procedure: competitive negotiated and competitive dialogue: available whenever negotiation needed for non-"off the shelf" products. May not negotiate minimum requirements or award criteria.

Innovation partnership: new procedure to enable the development of innovative products or services and the purchase of the results by the authority. May be single supplier or multi-supplier.

Shorter minimum time periods: generally 30 days for requests to participate (35 days for tenders in open procedure).

Dynamic purchasing systems: revamped – no OJEU notice for call-offs, may add suppliers during the term – in effect an open approved supplier list.

Turnover cap for financial qualification: up to twice contract value unless justified by "special risks".

Electronic communication: mandatory in procurement (from 18/10/18). Earlier for central purchasing bodies (18/4/17). New rules on **electronic auctions** and the use of **electronic catalogues**.

Mutuals: permissible to reserve certain social and health sector contracts for mutuals. Contract must not exceed three years.

"Light touch regime" for social and other specific services (Part A/B distinction for services abolished). Mandatory OJEU notice for most ex Part B services but flexibility to define procedure. Higher threshold (€750,000).

Below-threshold: must advertise in Contracts Finder (if you advertise at all). Must not use a PQQ. Suitability questions must be proportionate. Publish award decisions in Contracts Finder.

Clarifications (1): you can:

- exclude tenders which exceed budget (if determined and documented in advance)
- allow late submission of missing parts
- exclude bidders for past service deficiencies (but most allow self-cleaning)
- use references for selection at PQQ

Clarifications (2): you can also:

- use qualification and experience as an award criterion (if relevant)
- take authority costs into account in evaluation
- have meetings with bidders in all procedures (but take notes!)
- take into account efficiencies/cost savings in multi-lot bids
- use life-cycle costing

In-house awards: codification of case law on in-house awards in situations of sole control (*Teckal*), joint control (*Coditel*) and public-public cooperation (*Hamburg*). Case law still applicable.

Contract modifications: codification of *presstext* case. Clear, precise and unequivocal review clauses required for most "substantial" modifications. Substantial modification = materially different in character, outcome – affecting, shifts economic balance in favour of the contractor, extends scope considerably, replacement of contractor (except bona fide restructuring). Case law still applicable.

Deemed termination of contracts where there is a substantial modification, contractor should have been excluded or where the Court of Justice of EU has found that the contract should not have been awarded because of a serious infringement.

Cross-border procurement: new rules to facilitate collaboration between authorities in different Member States.

In force on 26 February 2015 and applicable to all procurements commenced after that date.

Contacts

Nick Pimlott

Partner - London

E: nick.pimlott@fieldfisher.com

T: +44 (0)20 7861 4073

John Cassels

Partner - London

E: john.cassels@fieldfisher.com

T: +44 (0)20 7861 4948

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