

Application of EC procurement Directives to registered social landlords

Guidance from the Housing Corporation

10 September 2004

Introduction

1 The Office of the Deputy Prime Minister announced on 10 September 2004 that HM Government has accepted that the European Commission is correct in its view that registered social landlords (RSLs)^{*} fall within the definition of Bodies Governed by Public Law (BGPLs) as defined in the EC procurement Directives and must therefore comply with the Directives when conducting procurements.

2 The EC public procurement Directives have long covered most high value public procurements. Their purpose is to open up the public procurement market to better ensure the free movement of goods and services within the EU. In most cases the Directives require a competitive procedure. They are in line with the grain of the Government's policy that procurement decisions should be based on value for money through competition in order to obtain the maximum return from procurements which are funded (in whole or in part) by the public purse.

3 All contracts awarded by registered social landlords fall within the scope of the Directives' provisions when they exceed specific thresholds (currently of the order of £150,000 for supplies and services contracts and £3.8 million for works contracts) and do not come within one of the specific exclusions. This is not limited to construction or maintenance contracts, but applies across the whole of the business of registered social landlords. The Directives have been transposed into UK law in Regulations, the main ones applicable are the Public **Works** Contracts Regulations 1991 (S.I. 1991/2680), the Public **Supply** Contracts Regulations 1995 (S.I. 1995/201) and the Public **Services** Contracts Regulations 1993 (S.I. 1993/3228), as amended. The Regulations can be accessed at the Office of Government of Commerce website <http://www.ogc.gov.uk> in the *Procurement Policy and EC Rules* section.

Exclusion from the Regulations

4 The Regulations provide a limited number of specific exclusions. Importantly for registered social landlords these exclusions include contracts for the acquisition of land or any interest in land. For example, this exclusion will apply in circumstances where a registered social landlord is entering into a contract:

- to purchase an interest in land (leasehold or freehold);
- to purchase newly completed or e to purchase newly completed or existing dwellings (leasehold or freehold).

* Within the meaning of sections 1 and 2 of the Housing Act 1996

Responsibility for compliance

5 RSLs are responsible for ensuring that their procurement processes comply with the EC Directives. An additional funding condition to this effect was incorporated in the Funding Conditions which form part of the Corporation's Approved Development Programmes for 2004/2005 and 2005/2006. (See Capital Funding Guide, General-1, Paragraph 3.4, Grant condition 10)

6 It is the responsibility of individual registered social landlords to satisfy themselves that their procedures are compliant with UK public procurement Regulations. Registered social landlords need to become familiar with the scope of the Regulations, financial thresholds, timetable requirements and routes to compliance. The Housing Corporation is not in a position to offer advice on whether particular contracts fall within the scope of the Directives, or whether particular procurement arrangements are compliant. Registered social landlords should seek their own advice on complying with the EC Directives.

7 Extensive guidance on procurement policy and the EC Directives, as well as best practice issues, is available on the OGC website – <http://www.ogc.gov.uk>. This includes best practice procurement guidance in the *Successful Delivery Toolkit*.

8 A number of specialist organisations offer a range of free and chargeable advice, training and support services on the laws on public procurement and advertising requirements of the Official Journal of the European Communities (OJEC), e.g.

- Improvement and Development Agency (IdeA)
<http://www.idea.gov.uk>
- CMPS training on the Certificate of Competence in Procurement
<http://www.cmeps.gov.uk>
- Independent Procurement Advisory Service (IPAS)
http://ipas.ngfl.gov.uk/proc_home.php
- OGC Buying Solutions
<http://www.ogc.buyingsolutions.gov.uk>

A range of framework agreements are available from OGC Buying Solutions. The agreements are fully compliant with the UK Regulations, and as such with the EC Directives. There may be framework agreements of particular relevance to RSLs e.g. the building and contents framework agreements. There should be significant timing advantages in RSLs using these framework agreements in that the tendering exercises are already complete. It is anticipated that value for money gains should outweigh the cost of using these frameworks. They, and private sector providers, may be willing to organise and provide short training courses on the public procurement process. Fees would be payable for these services.