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## Procurement Policy Note – Reforms to make public procurement more accessible to SMEs

Information Note 03/15 18<sup>th</sup> February 2015

### Issue

Following PPN 02/15 that confirmed the dates on which the Public Contracts Regulations 2015 were made and come into force, this PPN provides guidance on a number of new reforms to make public procurement more accessible to businesses, in particular, Small and Medium-Sized Enterprises (SMEs)<sup>1</sup>

These reforms are implemented in Part 4 of the new Public Contracts Regulations 2015, which will, primarily, come into force on 26<sup>th</sup> February 2015 (for timing, see the section below).

### Reforms

The key reforms are:

- Abolition of a pre-qualification stage for procurements below the EU thresholds, and a requirement to have regard to guidance on qualitative selection issued by Cabinet Office for above EU threshold procurements.
- A requirement for contracting authorities to insert provisions in all public contracts to ensure prompt payment through the supply chain
- The requirement to advertise as many public sector opportunities in one place (Contracts Finder), and to publish award notices for contracts and call-offs from framework agreements.

This document sets out the main features of this legislation but is not a complete guide. It is not legal advice. You should refer to the Public Contracts Regulations 2015, and seek legal advice where necessary.

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<sup>1</sup> <http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/>

## **Timing**

The requirements relating to Pre-Qualification Questionnaires (PQQs) and Prompt Payment, will apply to all contracting authorities from 26<sup>th</sup> February 2015.

All other requirements will apply to central government contracting authorities from 26<sup>th</sup> February 2015 and non central government contracting authorities including NHS Trusts from 1<sup>st</sup> April 2015.

These reforms apply only to procurements that commence on or after the date on which they take effect. They are not intended to apply retrospectively.

## **Dissemination and Scope**

This PPN is directly applicable to Central Government, Agencies, Non departmental Public Bodies, wider public sector, local authorities and NHS bodies.

Please circulate this document (for information) within your organisation, its Executive Agencies and Non Departmental Public Bodies and to all Contracting Authorities for which you are responsible, drawing it to the attention of those with a purchasing role.

## **Background and new requirements**

These new reforms take account of the wide consultation and engagement that the Government has undertaken with public bodies, small businesses and trade bodies over the last two years and in response to Lord Young's recommendations to Government in his report on 'Growing Your Business' (May 2013).

These reforms improve the way public bodies administer PQQs, the accessibility of contract opportunities and prompt payment of suppliers.

They provide a valuable opportunity for contracting authorities to achieve increased quality and value for money in the procurement of goods and services, in particular by making procurement opportunities more accessible to smaller businesses and voluntary organisations.

The reforms are set out in Part 4 of the new Public Contracts Regulations 2015. They will help ensure a simpler and more consistent approach to procurement across all public sector authorities.

## **Explanation of the new requirements:**

### **Use of PQQs**

#### ***In below-threshold procurements (regulation 111)***

A contracting authority may not include a pre-qualification stage in any procurement where the value of the procurement is below the EU threshold for goods and services, currently £111,676 in central government and £172,514 outside central government. In practical terms, this means that PQQs used as part of a pre-qualification stage are not permitted. However contracting authorities may ask questions relating to a potential supplier provided that the questions are relevant to the subject matter of the procurement and proportionate.

Regulation 111 does not apply to procurements where the estimated value net of VAT is less than £10,000 (central contracting authorities), or £25,000 (for sub central contracting authorities and NHS Trusts). However, a PQQ is unlikely to be necessary or proportionate for contracts below these thresholds.

#### ***In above-threshold contracts (regulation 107)***

For procurements above these threshold values, contracting authorities must have regard to any guidance issued by Cabinet Office in relation to the qualitative selection of economic operators.

#### ***Prompt Payment (regulations 113 and 122)***

Contracting authorities must ensure that all public contracts contain suitable provisions stating that valid undisputed invoices will be paid by the contracting authority within 30 days. Public contracts must also contain a condition requiring contractors to include similar provisions in their contracts, and so on down the supply chain.

Additionally, each contracting authority must publish statistics showing the proportion of invoices paid in accordance with these obligations; the total amount of any liability to pay interest which arose during the year; and the total amount of interest actually paid in discharge of any such liability. This figure must be published annually in relation to the previous 12-month period at the end of the authority's accounting year.

#### ***Publishing contract opportunity advertisements and contract award information on the new Contracts Finder portal (regulations 106 and 110)***

Contracting authorities must ensure that when they advertise a new procurement opportunity above certain thresholds, that the advert is placed on the new national Contracts Finder portal. <https://www.gov.uk/contracts-finder>

This website must be used in addition to, or instead of any local or regional portals currently being used. Authorities must subsequently ensure that contract award information is placed on Contracts Finder once the contract is awarded.

The thresholds are as follows:

Central Contracting Authorities: £10,000

Sub Central Contracting Authorities and NHS Trusts\*: £25,000

\*Note: where existing standing orders in local government are in place that have a higher value for advertising opportunities, the higher value applies rather than £25,000.

## **Exemptions**

The main exemptions from these regulations are:

- Contracting authorities carrying out devolved or mainly devolved functions in Scotland, Wales and Northern Ireland.
- Procurement of health care services for the purposes of the NHS within the meaning and scope of the National Health Service (Procurement, Patient Choice and Competition) (No. 2) Regulations 2013.
- Maintained Schools and Academies are exempt from Contracts Finder obligations and the Prompt Payment obligations.

Note: This is not an exhaustive list and contracting authorities should refer to the Public Contracts Regulations 2015 for further information.

More Detailed Guidance on these reforms can be found here:

<https://www.gov.uk/transposing-eu-procurement-directives>

## **Contact**

Enquiries about this PPN should be should be directed to the Crown Commercial Service Helpdesk (telephone 0345 410 2222, email [info@ccs.gsi.gov.uk](mailto:info@ccs.gsi.gov.uk)).