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# Change in Public Procurement: the Role of KAM

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# The Role of KAM in Public Procurement

## Objectives:

**Review the European directive on public procurement (2014)**

## Key Issues:

**The changing focus of public procurement**

**Implications for KAM**

**Supplier-Client Relationship Management**

# Public Procurement

- Around the world PP accounts for between 12%-24% of GDP (€1.3 Trillion)
- EU is different from many other jurisdictions, encouraging intra-community trade, rather than erecting barriers to foreign suppliers
- <http://www.tradingeconomics.com/european-union/gdp>

# PP as % of GDP selected countries

Country	PP Expenditure % GDP
Norway	12%
Sweden	17%
Denmark	15%
Finland	18%
United Kingdom	14%
France	15%
Netherlands (Highest)	21%
Mexico (Lowest)	5%
OECD (Average of 35 member states)	12%

Source: OECD

# European PP Spending 14% of GDP

ec.europa.eu

## European GDP

The latest reported value for - European Union GDP - plus previous releases, historical high and low, short-term forecast and long-term prediction, economic calendar, survey consensus and news. European Union GDP - actual data, historical chart and calendar of releases - was last updated on September of 2016.

Actual	Previous	Highest	Lowest	Dates	Units	Frequency	
16229 (2015)	18516 (2014)	19029 (2008)	358 (1960)	1960- 2015	US\$	Yearly	Current US\$ bn

<http://www.tradingeconomics.com/european-union/gdp>

EU Public Procurement Spend  
2015 = US\$2,272bn

# Public Procurement in Europe

- Legislation in Europe relating to public procurement aims:
  - Reduce barriers to intra-union trade
  - Foster freedom in product and service provision
  - To create savings through open competition
  - Achieve transparency
  - Militate against corruption
  - Achieve social and economic goals of the Union

# What do they spend it on?

- **Public works** – Major contracts relate to infrastructure such as buildings, roads, hospitals, schools etc
- **Products** – Supply contracts are for the procurement of goods or products, and may include siting, installation, or other related services. These can be for the purchase, lease, rental, or hire purchase of products.
- **Services** - Services contracts are awarded for services of every description, examples of which are: Advertising, Catering, Computer support, Engineering, Financial services, Maintenance and repair, Management consultancy, , Market research, Office cleaning, Publishing and printing, Security

<http://etenders.gov.ie/Media/Default/SiteContent/LegislationGuides/GuidetoTenderingforPublicSectorContractsinIrelandUK2004.pdf>



# Process

- Above an EU prescribed cost threshold a common EU tendering process
  - Contracting authority develops tender document specifying their needs, conditions under which bids may be made, criteria used to reach a decision
  - This is published in the Official Journal as an “open” or “restricted” tender opportunity. If open anyone can tender, if restricted only those invited (qualified) to tender may do so.
  - Tenders are received and must be accepted or rejected on the basis of the criteria established in the tender document
  - No dialogue may occur between the contracting authority and the suppliers making bids (this was the case with all contracts prior to 2004)

# Process

**Tenders below the thresholds** - Only those contracts exceeding the thresholds are administered under EU directives, others may be administered under national government regulations, so long as they conform to the core EU principles of transparency, equal treatment, open competition, sound procedural management, free flow of goods and freedom of trade within the union.

<http://www.gov.scot/resource/doc/1036/0084317.pdf>

# Limitations

- A requirement for the contracting authority to draw up the tender document focusing upon “solutions” rather than detailing the problems they wished to solve.
- Missed opportunities for innovation.
- Ignorance of “better” solutions available.
- Sub-optimal solutions.
- Lowest cost
- Focus upon cost of acquisition rather than lifetime value.
- Process difficult for SMEs to participate in.

# New Regulations for Procurement

- New EU Directives on public procurement 2014 requiring conformance by April 2016
- Public Procurement Regulations Document published by UK Gov. 2015
- European Single Procurement Doc available online 2018

# The (New) Public Contract Regulations

Guide to key changes, Evershed

- Procurement within the meaning of PCR 2015 is now expressly defined as “the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose”.

<http://www.eversheds.com/documents/sectors/tmt/The-Public-Contracts-Regulations-2015-Unravelling-the-key-changes.pdf>

# The (New) Public Contract Regulations

- New regulations thresholds
  - Works £4.32m
  - Goods and services £111,676/£172,514
  - Light touch services £625,050
- Light touch services: Health, social and related services, Administrative social, educational, healthcare and cultural services, Compulsory social security services, Benefit services, Other community, social and personal services including services furnished by trade unions, political organisations, youth associations and other membership organisation services, Religious services, Hotel and restaurant services, Legal services, to the extent not excluded by regulation 10(1)(d), Other administrative services and government services , Provision of services to the community, Prison related services, public security and rescue services to the extent not excluded by regulation 10(1)(h) , Investigation and security services
- [http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf)

# EU Procurement Reform Objectives 2016

[http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8562](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8562)

## 1. Higher efficiency, more eProcurement and easier participation for SMEs

The new rules, including a new electronic self-declaration for bidders, pave the way for the **digitalisation of public procurement**, which will considerably increase the efficiency of the public procurement system and lead to billions in public savings.

By limiting the turnover requirements and introducing the option of dividing tenders into lots, it is now **easier for small and medium-sized enterprises (SMEs) to bid on public contracts**. Moreover, the new electronic self-declarations will primarily benefit SMEs.

## 2. Modernising public services and slashing administrative burden

**Simpler procedures for contracting authorities** will open up the EU's public procurement market, prevent 'buy national' policies and promote the free movement of goods and services. As a result, contracting authorities will obtain better value for money.

Greater flexibility of the new legislation includes also the possibility of choosing the **best quality-price ratio** (value for money) because Member States are free to **eliminate price as the sole award criterion**

To encourage **innovation in public administration**, contracting authorities can **cooperate** with a company (selected in a competitive tender procedure) to develop an innovative product, which does not exist on the market.

**New rules on concessions** will increase competition allowing Member States to achieve better value for money when mobilising private capital and know-how to complement public resources and enable new investment in public infrastructure.

## 3. Addressing societal challenges through public procurement

By using their purchasing power to **choose socially responsible goods**, public authorities can set a positive example and encourage enterprises to make wider use of social standards in the management, production and provision of services.

Fresh opportunities have also been opened up for public authorities to **spur eco-innovation** by using new award criteria in contract notices that place more emphasis on environmental considerations.

## 4. Preventing corruption: Creating a culture of integrity and fair play

The new directives set the proper framework for the prior publication of tenders, clear and unbiased technical specifications, equal treatment of bidders in all stages of the process, and objective evaluation of tenders.

[http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item\\_id=8562](http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8562)

# Objectives of EU 2014 Directive

- Cost reduction
  - Trade effect
  - Competition effect
  - Restructuring Effect
- Transparency
  - Official Journal
    - Periodic Indicative Notices
    - Invitation to tender
    - Contract award notices
- Thresholds
  - Open process to SMEs
  - Counteract adverse effects of price reduction pressure



# UK Document Content

- Conflicts of interest Regulation
- Electronic communication and access to documents Regulations
- Procedures and timescales Regulations
- **Framework agreements Regulation**
- Dynamic Purchasing System Regulation
- Electronic auctions/catalogues Regulations
- Central Purchasing Bodies Regulation
- Joint procurements Regulation
- **Pre-procurement market engagement Regulations**
- Variants Regulation
- Lots Regulation
- Prior Information Notices

# UK Document Content (cont'd)

- Regulation
- Notices Regulations
- Bidder feedback Regulation
- Eligibility and selection Regulations
- Evaluation Regulations
- Abnormally low tenders Regulation
- Sub-contracting Regulation
- Modification of contracts Regulation
- Termination Regulation
- “Light Touch” regime Regulations
- Reserved contracts for certain services Regulation
- Individual reports Regulation

# Frameworks

## **Open procedure**

Under the open procedure, any interested party may submit a tender in response to the call for competition which will be an OJEU notice.

## **Restricted procedure**

Under the restricted procedure, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection requested by the contracting authority.

## **Competitive procedure with negotiation**

Following qualitative selection, all selected economic operators are invited to negotiate but this procedure can be carried out in successive stages provided this is indicated to bidders upfront (like the competitive dialogue procedure). The procedure has been clarified to confirm that contracting authorities may negotiate initial and all subsequent tenders but not the final tender. Contracting authorities may reserve the right to award following receipt of initial tenders without negotiation but this must be made clear at the start

# Frameworks

## **Competitive dialogue procedure**

The competitive dialogue procedure largely remains the same as that under PCR 2006 except towards the end of the process. Following close of dialogue and receipt of final tenders, tenders may be “clarified, specified and optimised” but this must not involve changes to the essential aspects of the tender or procurement. Post evaluation, the contracting authority may “negotiate” with the winning tenderer to “confirm financial commitments or other terms by finalising the terms of the contract” provided this does not materially modify the essential aspects of the tender or the procurement, or impact upon competition.

# Competitive procedure with negotiation and competitive dialogue

These two processes are available where:

- needs cannot be met without adaptation of readily available solutions;
- contract cannot be awarded without negotiations due to nature, complexity, legal/financial make-up or risks;
- technical specifications cannot be established with sufficient precision;
- they involve design or innovative solutions; or
- irregular (eg late submissions, abnormally low tenders) or unacceptable (eg not required qualifications/ price exceeds published budget) tenders have been received in response to open/ restricted processes.

# Frameworks

## Innovation Partnership

- This is a new route adopted by the EC for public procurement which is aimed at increasing innovation. The economic operators taking part are known as partners. The basic features of the innovation partnership procedure include:
- the contracting authority will seek offers for one or more partners to assist in the development of an innovative product, service or works not yet on the market, and the subsequent purchase of the innovative solution without the need for a separate procurement procedure for the purchase, provided the final purchase corresponds to pre-agreed levels of performance and maximum costs;
- the procurement can be run with one or several partners carrying out separate R&D activities;
- the partnership procurement shall be structured to follow R&D activities and the duration/value of each phase should reflect the degree of innovation and sequence of the activities;
- the partnership procurement shall set intermediate targets to be attained by the partners taking part and provide for payment in appropriate installments;
- termination after each phase (in full or per partner) can be reserved upfront;
- the procurement can be carried out in successive stages provided this is indicated upfront;
- the initial and each subsequent tender is to be negotiated but the final tender must not be negotiated; and the minimum requirements and the award criteria must not be negotiated. Minimum timescales are set out on page 9. Note that a PIN cannot be used as a call for competition so a contracting authority using this procedure will need to commence its tender process by publishing a contract notice in the usual way.
- (Ref Eversheds)

# Pre-procurement engagement

- **Pre-procurement market engagement**
- **REGULATIONS 40 AND 41**
- PCR 2015 permit soft market testing provided this does not distort competition and is transparent and non-discriminatory. The UK Government actively encourages the use of soft market testing to deliver more effective and efficient procurement processes.
- Where organisations have been involved at pre- procurement stage (whether in soft market testing or otherwise, eg incumbents), a contracting authority must ensure that there is a level playing field when the tender process starts such as providing information which has been made available at pre-procurement stage.
- Bidders may be excluded from the procurement in circumstances where their prior involvement would distort competition (and there are no other means of ensuring equal treatment which can be applied).
- “You can drive much more value by engaging with the market pre-procurement and in contract management. The new rules should help with that. That’s where we want to see a step change.” Ed Green Director EU and Domestic Procurement Policy UK Gov
- Martin Reeves, national procurement champion for local government and chief executive at Coventry City Council, said of the directives “We can either see them as an opportunity for transformation and innovation or we can be hamstrung as we were in the past.

# Opportunity

- Is there an opportunity in the elements of these new directives for KAM and *kams* to play a leading role in creating real value before and during the bidding process?
- “Contracting authorities entering into discussions during the process, with a view to improving the content of each bidder’s offer, provides an excellent opportunity for suppliers to tailor and improve their solutions as well as their financial offering, which would have been lost through more traditional means of procuring.” (Catherine Cooper Thrive Homes)  
<http://www.cips.org/supply-management/opinion/2015/february/new-public-contracts-regulations-will-make-procurement-sexy-again/>
- How can you use this information to help in your approach to key customers?



# Professionalism CIPS

- The Chartered Institute of Purchasing and Supply has recently addressed the issue of low levels of professionalism in public procurement caused by its being perceived as an operational rather than a strategic function
- What can *kams* and KAM programmes do to help in the development of more productive and value laden buyer seller relationships in the Public sector?

# The Professionalisation of Public Procurement

Has KAM/*kam* a role to play?

# Institute for Public Procurement and Chartered Institute for Purchasing and Supply

## Public Procurement Practice

**Zurich Study** 2011 showed PP authorities ill prepared for supplier relationship management

- Poor risk assessment (only 6% perceived the possibility of failure in the supply chain)
- Low perception of risk
- Little examination of suppliers' financial or operational competence
- Increase in outsourcing with little consideration given to anything except cost
- Large number of suppliers financially unsound

**Good Supplier Relationship Management (SRM) is an effective practice that will allow an organization to:**

- Identify strategic suppliers based on relative importance (supplier stratification);
- Define operational expectations and establish a governance structure and process for:
  - internal and supplier interactions across the life cycle of the supplier relationship;
  - Define formal processes for management involvement in the relationship;
  - Clarify internal roles and responsibilities;
  - Establish processes to effectively manage performance; and
  - Develop supplier capabilities to continuously improve the value of the organization.

# Supplier Relationship Management

## Supplier Stratification

Effective SRM requires a clear understanding of which suppliers are the most strategic to the organization and which are less important. Rather than viewing the suppliers on which the organization spends the most resources as the most important, additional factors should be considered such as:

- Risk
- Operational criticality
- Technical integration
- Total value
- Long-term fit with the organization
- Profitability
- Distributor services
- Performance
- Loyalty.

How can KAM use these observations to enhance relationships?

# Benefits to Contracting Authorities

- Identifying strategic suppliers will help organizations:
  - Optimize resource allocation across a broad supplier base;
  - Establish and manage relationship expectations by suppliers;
  - Provide strategic and operational groups with consistent partnering strategies within their supply bases;
  - Provide strategic and operational groups with a strategic view of their supplier portfolios
    - based on relationship value
    - enabling improved decisions on further supplier consolidation
    - leading to further strategic sourcing opportunities
    - motivate suppliers to strive for advancement across supplier tiers.

# Relational Development Techniques

- Joint investment in new capabilities;
- Intellectual capital sharing;
- Joint value creation opportunity identification;
- Joint process mapping and improvement;
- Capability acquisition by supplier;
- Multi-supplier collaboration;
- Multi-organization collaboration;
- Joint personnel training; and
- Systems and process integration.

How can these tools be used by KAM?

# Workshop Outcomes

- How can KAM profit from the new frameworks?
- competitive procedure with negotiation
- competitive dialogue?
- Innovation partnership?
- pre-procurement engagement?
- How can KAM help raise the game of their customers?

# References

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- Chartered Institute of Purchasing and Supply