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A basic overview of the procurement process for Housing Associations including a consideration of the impact of Brexit

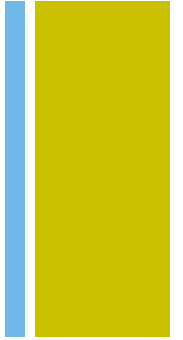
Part 1 Content:

- Legal overview of the procurement process
- Potential impact of Brexit
- Public Contracts Regulations 2015
- Pre-procurement considerations
- PQQ stages
- The tender process



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Overview

- Overview and general principles of procurement
- Derived from the EU Treaty principles of the single market
- The key principles (“4 freedoms”):
 - freedom of movement of goods
 - freedom of movement of workers
 - freedom of establishment; and
 - freedom to provide services

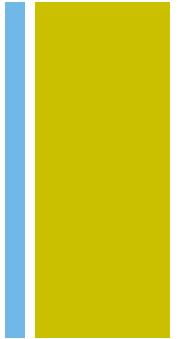
Derived from the 4 freedoms are the following principles:

- Non-discrimination and equal treatment
- Proportionality
- Mutual recognition
- Transparency

Primary UK legislation is the Public Contracts Regulations 2015 (**PCR**)



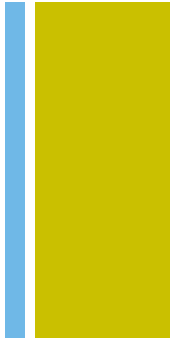
Potential impact of Brexit



- Current EU rules will continue to apply after Article 50 is triggered:
 - continue to interpret UK legislation in the same way
 - damages still available for a failure to implement EU law
- Government intends to preserve existing procurement law
- Procurement Lawyers' association has set up a working party to consider various practical issues

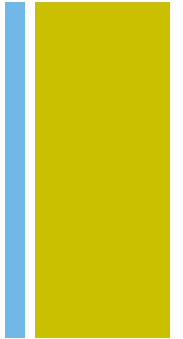


Who must company with the PCR?



- Any public body that is a contracting authority:
 - government departments
 - local authorities
 - Police and fire authorities
 - NHS Trusts
- Various non-departmental government bodies, such as the British Library, the Competition and Markets Authority and the Gambling Commission
- The House of Commons
- Includes Housing Associations

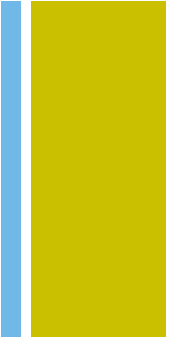
+ What contracts does the PCR apply to?



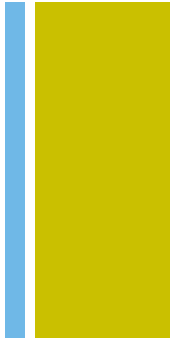
- Contracts for the supply of goods (public supply contracts)
- Contracts for carrying out works (public works contracts)
- Contracts for services (public services contracts) (light touch regime may be relevant)
- Specific types of contract defined by the PCR e.g. framework agreements
- Certain contracts fall outside of the regime

+ Issues to consider before you start

- Prior involvement, conflicts of interest and fairness
- Social and environmental considerations
- Best value
- Non-commercial considerations



+ Issues to consider before you start



- Current advertising thresholds
- Treating advertising requirements
- Supplier Qualification Information Database (SQuID)
 - part 1 – introduction
 - part 2 – guidance on selecting questions
 - part 3 – question catalogue

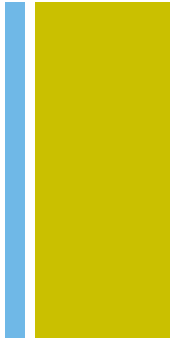


Benefits of using SQuID

- Increased efficiency
- Achieve greater standardisation
- Increased transparency



Benefits of using SQuID



- Use SQuID during the selection stage
- If using the restricted process – use during the pre-qualification stage
- Select questions for PQQ using SQuID
- If using open process, during tender stage
- Use SQuID for procurements that fall below EU thresholds

Choice of procedure

- Trend towards open procedure
- But lose the ability to rank tenderers based on technical and professional ability
- Only invite tenderers with best experience and processes
- Risk having large numbers of tenders to evaluate
- Tenderers know that they are one of a large number of bidders so chances of success are limited

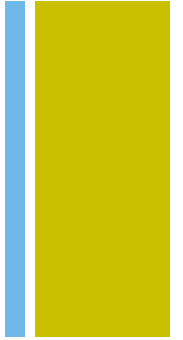


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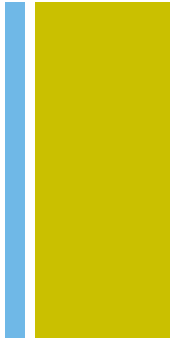




Invitation to tender (ITT)

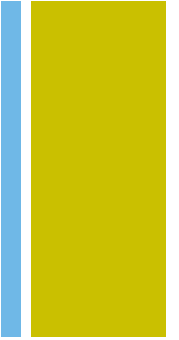


- Must be made freely available from the outset on the internet
- “Issued” to tenderers via Sell to Wales
- Contents should include:
 - introduction and overview
 - procurement information
 - acknowledgment and intention to tender
 - procurement timetable
 - contract documents



For large PFI/PPP projects dialogue stage includes:

- Invitation to submit outline solutions followed by initial dialogue
- Bidders submit outline solutions and pre-bid deliverables
- Authority evaluates and clarifies bidders' outline solutions and discusses them with bidders
- Authority issues invitation to submit detailed solutions
- Wide ranging dialogue with bidders



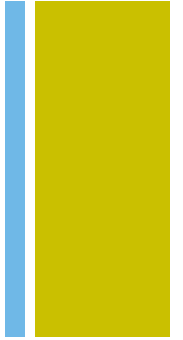
- Discontinuing a procurement
- Authority has a wide discretion to terminate the process
- May discontinue to correct a mistake
- But not if the reason is to breach the PCR e.g. change criteria to favour one bidder

Award criteria

- Must be clearly set out in ITT
- Should be on the basis of the most economically advantageous tender
- Lowest price or cost or best price-quality ratio



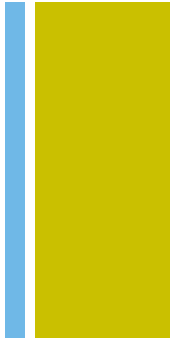
Possible award criteria



- Price or cost
- Quality e.g. technical merit, aesthetic and functional characteristics
- Organisation, qualification and experience of staff
- After-sales service and technical assistance



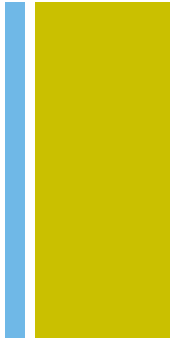
Award criteria



- Must be linked to subject matter of the contract
- Social and environmental criteria may be used provided that they are:
 - Measurable and verifiable
 - Linked to subject matter of contract
- Disclosure – criteria must be:
 - Transparent
 - Objective
 - “most economically advantageous” factors
 - Weighted



Award criteria



- Price (or cost) – general part of award criteria
- Minimum criteria
- “Going beyond”
- Selection issues and “experience”
- Incumbent advantage
- Marking systems

Part 2 Content:

- Contract documents
- Sub-contracting
- Contract terms
- Tender stage and evaluation
- Standstill and contract awards
- Breach of the PCR

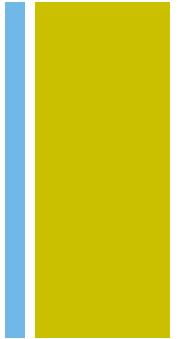


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Contract documents

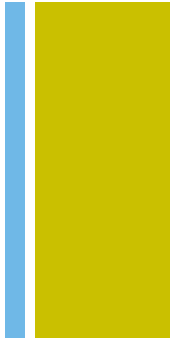


Should contain:

- Specification
- Payment
- KPIs
- Contract terms



Contract documents

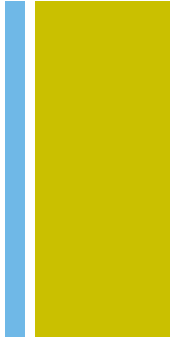


If using standard form documents consider:

- Nature of the work
- Preference for cost or price based approach
- Emphasis on partnering or co-operational approaches
- Size of contract



Contract documents

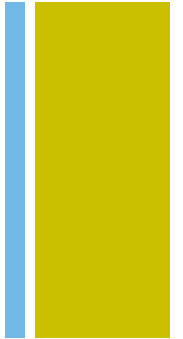


Typical examples:

- New Engineering Contract (NEC)
- Joint Contracts Tribunal (JEC)
- Association of Consultant Architect (ACA)
- NHF Schedule of Rates Form of Contract 2011
- Standardisation of PF2 Contracts



Contract documents



- May ask bidders to indicate
 - what share of the contract they intend to sub-contract
 - the identity of the subcontractors
- Must require main contractor to notify them of
 - name, contact details and legal representatives of subcontractors
 - any changes to information
 - similar information in relation to new subcontractors
- May exclude proposed sub-contractors for failing to meet minimum selection requirements

Contract terms

- Anti-bribery
- DBS checks
- Safeguarding
- Code of conduct
- Standard of workmanship/duty of care

Contract terms

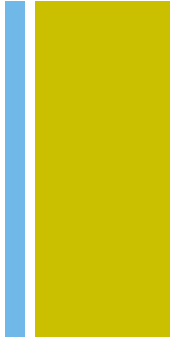
- Data protection
- Confidentiality and data handling
- Freedom of information
- TUPE and pensions
- Liquidated damages

Contract terms

- Indemnity
- Limitation of liability
- Insurance
- Termination
- Consequences of termination
- Dispute resolution
- Boiler plate



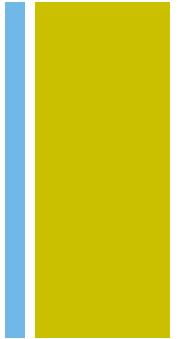
Tender stage and evaluation



- Strict approach to compliance with conditions and deadlines
- Also failure to complete part of tender
- Non-compliant tender and missing information
- Clarifying tenders



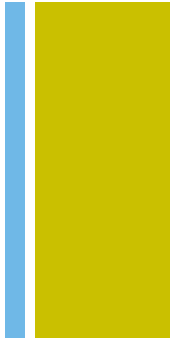
Tender stage and evaluation



- Abnormally low tenders
- Evaluation panel
- Evaluation panel scoring and record keeping
- “Manifest error”



Standstill and contract award



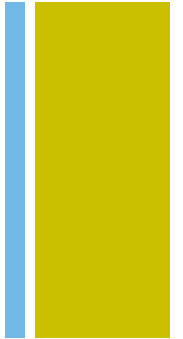
- Timing
- Standstill requirements
- Feedback to be included in the standstill letter
- Contract award notice

Other issues

- Calling off from framework agreements
- Contract reports
- Disclosure of contract copies
- Varying contracts



Breach of the PCR



- Breach of the PCR
- Relevant time periods
- What is actual or constructive knowledge?
- Potential sanctions / remedies



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**Thank you
Any questions?**