

# UK transposition of new EU procurement directives: Draft regulations

## Consultation response

**17 October 2014**

CIPFA, the Chartered Institute of Public Finance and Accountancy, is the professional body for people in public finance. Our 14,000 members work throughout the public services, in national audit agencies, in major accountancy firms, and in other bodies where public money needs to be effectively and efficiently managed.

As the world's only professional accountancy body to specialise in public services, CIPFA's portfolio of qualifications are the foundation for a career in public finance. They include the benchmark professional qualification for accountants working in public benefit organisations as well as a postgraduate diploma for people already working in leadership positions. They are taught by our in-house CIPFA Education and Training Centre as well as other places of learning around the world.

We also champion high performance in public services, translating our experience and insight into clear advice and practical services. They include information and guidance, courses and conferences, property and asset management solutions, consultancy and interim people for a range of public sector clients.

Globally, CIPFA shows the way in public finance by standing up for sound public financial management and good governance. We work with donors, partner governments, accountancy bodies and the public sector around the world to advance public finance and support better public services.

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## **General Comment**

CIPFA welcomes the opportunity to respond to the consultation on the UK transposition of new EU Procurement Directives: Draft UK implementing public contract regulations 2015. This response focuses on the questions included in the consultation document, and in particular those questions where we felt it appropriate for us to comment. We've identified the particular questions responded to. We've not included questions where we have no additional comments to make.

## **Responses to questions**

### **Question 1 - Draft regulations**

CIPFA supports an approach to commissioning and procurement that allows for flexibility and supports innovation. As such, in general, we support the approach taken in the Public Contracts Regulations (the Regulations), in incorporating a flexible approach where possible. We also welcome the support for enabling contracting with small businesses and social enterprises including organisations with a public service mission and with a participatory business model.

CIPFA does note, however, that the removal of a two stage process for procurements under the threshold may have unintended consequences. There is a real concern that this removes a cost-effective means of pre-selecting viable tenderers through the use of Pre-Qualification Questionnaires (PQQs). It isn't clear that the benefits associated with PQQ have been retained within the proposed revised procurement processes.

CIPFA also notes the important role that guidance will play in respect of implementation of the regulations. Guidance needs to be clear and concise and crafted in such a way as to provide the flexibility required.

### **Question 3 - Sheltered workshops**

We welcome the proposed approach including the development of separate guidance on interpreting 'disabled persons', 'disadvantaged persons', 'sheltered workshop', and 'sheltered employment programme'. Care will be needed when interpreting these terms and we would recommend consultation with appropriate stakeholder bodies. We also note the challenges in clearly defining these terms while also addressing the impact of potential changes in a person's status. For example, at what point a 'disadvantaged person' ceases to be disadvantaged and what implications this could have for a sheltered workshop.

### **Question 5 - E-procurement**

We note that the "framework" is intended as a statement of high level security principles, not a detailed guide, and therefore is appropriate on that basis.

### **Question 8 - Division of contracts into lots / SME access**

We support a flexible approach which allows for the variety of situations encountered when commissioning and procuring works, goods or services. As such it is important to recognise that a 'one size fits all' approach in relation use of lots would not provide the much needed flexibility in responding to local circumstances and internal and external factors.

### **Question 9 - Division of contracts into lots / SME access**

We believe the approach to explaining the combined lots provisions, ie providing an explanation in supporting guidance will mean that considerable care is needed in

formulating that guidance. The guidance should aim to be clear and, where possible, concise.

#### **Question 16 – Comments on light touch regime**

We note that while the light touch regime described in the consultation document refers to health and social services, it omits education, although educational services are included in the EU Directive. We would welcome recognition and discussion of education alongside health and social services, when considering the light touch regime.

We support the principle of a suitable light touch regime applying across health, social services and education. Care will be needed when formulating the 'light touch' guidance to ensure it takes account of the range of characteristics of particular markets and industries, including local factors.

In regard to whether or not to mandate 'MEAT' (Most Economically Advantageous Tender) as the basis to award contracts under the Light Touch Regime, we acknowledge the level of support for not mandating MEAT. But we do have serious concerns that this may lead to an undervaluing of qualitative, technical and sustainable aspects of services. There is a risk that price viewed in the short term becomes the sole key factor, while in many cases a longer term and broader 'whole life' evaluation looking at a range of social and economic benefits and costs can result in more sustainable and effective services over the long term.

#### **Question 19 - New measures to increase SME participation in public procurement**

We've no technical points to make although, in general, we support increased SME participation in public procurement. SMEs including social enterprises and public service mutuals can play a crucial role in the development of innovative approaches to public service delivery.