

Procurement Policy Note.

Two Consultations:

- Modernising the Public Procurement Rules
- Implementing the Defence and Security Directive

Information Note 4/11 04 February 2011

This PPN covers the following two consultations:

1. The European Commission has launched a consultation on the modernisation of the public procurement rules
2. The Ministry of Defence (MOD) is consulting on the implementation of the Defence and Security Directive

Consultation 1

Modernising the public procurement rules

Issue

This note brings to stakeholders' attention that the European Commission has recently published a detailed consultation paper on the modernising of the public procurement rules, which marks the next formal stage in the Commission's programme to review and adapt these rules.

This gives you the opportunity to submit any further comments to us if you wish to do so.

In [PPN 21/11](#) we sought feedback on the effectiveness of the public procurement rules by 4 February 2011. The purpose of that exercise was to inform the UK's involvement in the ongoing review of the rules by the European Commission. Thanks to all of you who responded. The Commission's review is still underway, and it has now released a formal public consultation paper, to which the Cabinet Office is preparing a UK response.

We are analysing stakeholders' responses to PPN 21 to inform the UK response to the Commission's consultation. However, since the Commission's recent consultation paper is substantially more detailed than PPN 21, we wanted to make you aware of that detail and to offer the opportunity for further comment to anyone that so wishes.

Timing

If you have additional comments, please let us have them by 25th February 2011. Comments may be accepted after this date if we are notified in advance of this deadline.

Dissemination

Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible, drawing it to the particular attention of those with a purchasing role.

Contact

Please direct your response and any general enquiries to the Service Desk: 0845 000 4999 ogcservicedesk@cabinet-office.gsi.gov.uk .

Background

On 27 January 2011, the European Commission launched a consultation paper to take forward the process of modernising the EU public procurement rules. The Commission's press release makes clear that it aims to make life easier for public authorities and bidders across Europe (<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/11/88&format=HTML&aged=0&language=EN&guiLanguage=en>). The Commission expects to focus on providing smaller firms with access to contract opportunities, reducing red-tape and promoting cross-border procurement. The consultation is open to any interested parties, and will inform a Commission proposal for revised procurement rules due to be announced in the course of 2012.

The Cabinet Office is leading on the UK's engagement in the EU review. The Government's current view is that the public procurement regime needs to be radically simplified to reduce red tape and improve value for money. Cabinet Office is currently seeking feedback from UK stakeholders on the specific changes this will be used to inform a UK-wide response.

Consultation 2

MOD Consultation on the Defence and Security Directive Update

Issue

The MOD is in the process of transposing the Defence and Security Directive and is on track to meet the deadline to incorporate the regulations in UK law by 21 August 2011. Most of the policy outcomes have now been decided as a result of the First Consultation. The Second Consultation offers the opportunity to respond to questions regarding the implementation of the New Directive.

Timing

The Second Consultation commenced on 13 December 2010 and will close on 07 March 2011. Details of the Second Consultation, including all relevant directives and government guidance are available on the MOD website at: <http://www.mod.uk/DefenceInternet/AboutDefence/CorporatePublications/ConsultationsandCommunications/PublicConsultations/200981EcSecondConsultation.htm>

Dissemination

Please circulate this Procurement Policy Note (PPN) within your organisation, agencies, non-departmental public bodies (NDPBs), and any other bodies for which you are responsible, drawing it to the particular attention of those with a purchasing role, noting that this Directive extends to sensitive security purchases, which may be made by contracting entities e.g. utility companies.

Contact

Please direct your response and any general enquiries to the Neil Smith (dgdccs-3a-1@mod.uk), Commercial Systems, Director General Defence Contracts, Ministry Of Defence.

Background

The New Directive covers military and sensitive security equipment (and associated services and works), equipment that may be exempt from the current Public Contract Regulations by virtue of the Article 346 TFEU (formerly Article 296 EC) exemption. Although the New Directive allows for specific exemptions from competition their use will be limited to truly exceptional cases. It is the aim of the Directive to open up the European Defence Market to increased levels of competition therefore, we anticipate that a far greater proportion of defence and security requirements will be advertised in the OJEU.

Individuals and departments may wish to consider the effect of the New Regulations on any planned future requirements, particularly if they are involved in security-related or sensitive procurements. These include procurements which have similar features to those of defence procurement and are equally sensitive, such as:

- where military and non-military forces co-operate to fulfil the same mission;

or

- where the procurement is to protect security of the Member State against serious threats from non-military or non-governmental actors.

This may involve, for example, border protection, police activities and crisis management operations.

A further update on the Directive will be issued in due course.

Further Information

To understand more about the Directive, its implications, the potential for legal challenge or how it might affect future plans and established relationships with Industry, please contact Neil Smith (dgdccs-3a-1@mod.uk), Commercial Systems, Director General Defence Contracts, Ministry Of Defence.