

## Annex 1

### Impact assessment on European Commission proposals for new public procurement Directives in the public sector and for Utilities

<p>Title of EU proposals: Directive of the European Parliament and Council on public procurement and Directive of the European Parliament and Council on procurement by entities operating in the energy, water, transport and postal services sectors.</p> <p>Lead dept/agency: Cabinet Office</p> <p>Other depts/agencies with an interest: BIS</p> <p>Date: January 2012</p>	<p>Lead policy official: Peter Bennett</p> <p>Lead lawyer: Charles Barton/Michael Brannagan</p> <p>Lead economist: Nick Herrick</p> <p>Lead UKRep desk officer: Frank Moeschler</p>
<p><b>AFFECTED GROUPS</b></p> <p>This Impact Assessment (IA) covers the parallel proposals for new Directives on public procurement for public bodies and for utility sectors. These will replace the existing public sector Directive (2004/18/EC) and Utilities Directive (2004/17/EC). The Commission's aim in making these proposals is to simplify the EU public procurement regime and increase its cost effectiveness, while at the same time maintaining the basic framework, which provides for open and competitive procurement. In preparing to make these proposals, the European Commission conducted an evaluation exercise on how the existing rules were working, the results of which were published. The evaluation results fed in to the Commission's Impact assessment. The links to these documents is provided below. The figures in this IA are based on figures in the Commission's Evaluation Report, its Impact Assessment and other Commission reports.</p> <p><a href="http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/evaluation-report_en.pdf&amp;sa=U&amp;ei=A4HT-wM8Pusgb0x-WCDw&amp;ved=0CBAQFjAA&amp;usq=AFQjCNFrOzomkjcMveDdEba0hBgoKIRKNA">http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/evaluation-report_en.pdf&amp;sa=U&amp;ei=A4HT-wM8Pusgb0x-WCDw&amp;ved=0CBAQFjAA&amp;usq=AFQjCNFrOzomkjcMveDdEba0hBgoKIRKNA</a></p> <p>The evaluation report was based on 5 studies by various consultants, which covered: Cross border procurement above EU thresholds; public procurement in Europe; cost and effectiveness; taking stock of utilities procurement; estimating the benefits from the procurement Directives and the strategic use of public procurement in Europe. These studies used data from a variety of sources, were reviewed by experts and provide reliable background evidence.</p> <p>The main groups affected by the proposals on public procurement are public bodies (contracting authorities) and utilities (contracting entities) who wish to award contracts, which are within the scope of the proposals and economic operators who wish to apply for these contracts.</p> <p>In the UK, contracting authorities are made up of central government departments, local</p>	

authorities and other public bodies, such as NHS authorities and educational establishments. The utility sectors covered by the proposal are the energy, water transport and postal services sectors, although the power generation, energy supply and distribution and oil and gas exploration sectors in the UK have already been exempted from the scope of 2004/17/EC, because they operate in competitive markets.

Between 2005 and 2009, the value of contracts awarded by UK public purchasers and utilities was some 420.44 bn euros. Contracting authorities and utilities purchase a wide variety of works, supplies and services and there are a large number of economic operators who would be interested in bidding for these contracts. In 2010/12, some 216,000 different economic operators supplied to central government. These include all sizes of firms, although because the thresholds for covered contracts start at about the £100,000 level, it is less likely that micro enterprises will be interested in these opportunities. Between 2006 and 2008 at the EU level, SMEs won 34% by value and 60% by number of the contracts covered by the Directives.

## COSTS & BENEFITS

The likely costs and benefits are as follows:

### Costs:

The main costs for contracting authorities/entities are associated with running processes and for economic operators the costs arise from bidding for contracts. Some of these costs would happen regardless of the rules because public purchasers would follow a competitive process to get the best bid and economic operators would incur bidding costs. The Commission estimates that two thirds of the costs would remain if there were no rules at the EU level. The total cost for purchasers and suppliers of organising public procurement procedures in compliance with the requirements of the legislation is around 5.6 bn euros per year, or about 28,000 euros per contract. At the UK level, this equates to costs of about £0.48 billion pounds per year, (based on using the number of UK procedures as a percentage of the EU total in 2009).

### Potential costs arising from the proposals

In its proposals, the Commission has suggested the removal of the distinction between Part A and Part B services. Currently, Part A services are subject to the full rules, whereas Part B services are only subject to the rules covering technical specifications and the provisions of contract award notices, on the grounds that services, such as health and education services, are not likely to attract cross border interest.

The Commission proposes that personal and social services would be subject to transparency requirements and to a lighter regime decided at the national level. For other previously listed Part B services, such as legal services, and all other services that previously would have been classified as Part B by virtue of them not being listed in Part A, the full regime would apply. It is difficult to estimate how many contracts would be affected, because to date there has not been a requirement to publish Part B opportunities in the Official Journal of the European Union. For these services, however, there will be extra costs from applying the rules. There were 5,985 UK notices for services published in the OJEU in 2011. The Commission estimates that Part B services account for 13% of the

total number of services and that the Part B services that would be covered by the full rules account for 75% of these. Using the 5,981 number as a base figure, 13% of this would mean 584 UK notices. Using the figure of 28,000 euros for the cost of awarding a contract, would mean that the total cost per annum would be £13,937,209.

## Benefits

The main benefits of harmonised EU public procurement rules are that they provide for transparent competition and offer opportunities for economic operators to bid in a European wide market. This has the potential to increase competition, improve the performance of economic operators and provide better value for taxpayer's money. The average number of bids for contracts advertised at the EU level is 5.4, for the UK the number is 6.4. Between 2005 and 2007, the level of direct cross border procurement was 1.6% by number and 3.5% by value, whilst the corresponding figures for indirect cross border procurement were 11.4% and 13.9%. UK suppliers won 17% of the share of cross border awards. The level of savings from following competitive EU public procurement processes is estimated to be around 20 bn euros on the 420 bn euros advertised in accordance with the Directives in 2009. As such, the benefits significantly outweigh the costs. At the UK level, using the 2009 figure of £83 billion of contracts published this would amount to annual savings of around £4.15 bn per annum.

## Benefits from the new proposals

One of the main aims of the new Directives is to simplify the rules. This should reduce costs for both public purchasers and economic operators alike, which is important because for low value contracts costs of awarding contracts can amount to between 18-29% of the value. The proposed changes include a shortening of the minimum timescales for procurement process by about one third, improved e-procurement procedures, which should facilitate cross border bidding, and a reduction in administrative requirements, such as providing that only the winning bidder needs to provide supporting documentary evidence. The Commission's impact assessment estimates that the reduced costs for SMEs from reduced administrative burdens could be as much as 60% across the EU, and it follows that this should apply similarly for the UK. However, the Commission's impact assessment does not give a breakdown of the cost-reductions arising from individual rule easements, so it is not possible at this stage to estimate such figures for the UK.

## One-off costs

There will be one-off transposition costs to the UK and the Scottish Executive involving policy officials and lawyers; this will probably be in the range of 2 - 3 person years in total. There will also be potential costs for persons responding to consultations. In total these might be circa £0.5m.

## ENFORCEMENT:

Contracts awarded under the new Directives will be subject to the enforcement provisions of the Remedies Directives. These are 89/665/EC (public sector) and 92/13/EC (utilities) as amended by 2007/66/EC. In the UK, suppliers can enforce their rights, where they consider there has been a breach of the rules, through the courts. Purchasers will be keen

to comply with the rules and avoid any legal challenge, because of challenges could significantly delay the procurement process and even lead to contracts being ruled ineffective.

The draft directives do not impose, or require Member States to impose, licensing or similar requirements as a condition of awarding or seeking contracts. The governance provisions, if adopted, require that an oversight body would perform certain functions, such as implementation and monitoring.

#### LEGAL IMPLEMENTATION/COPY-OUT:

The current Directives (2004/18/EC for the public sector and 2004/17/EC for the Utilities) are implemented by means of statutory instruments. The new Directives, once adopted, will need to be implemented similarly. The approach taken in implementing the 2004 Directives was to copy-out as far as possible, with the intention of avoiding any gold plating. There might be aspects of the new Directives, which will be required to be adjusted to a UK context, but in general terms, there is no reason why a copy out approach should not be adopted.

Ministerial sign-off:

***I have read the analysis above of the potential impacts of this proposal and I am satisfied that, given the significance of the proposal, the time and evidence available, and the uncertainty of the outcome of negotiations, it represents a proportionate view of possible impacts.***

Signed by the responsible Minister:

Date: