New rules on public procurement and concession contracts

Three new procurement Directives were adopted by the European Parliament in 2014, with the requirement that Member States transpose these into national law by 17 April 2016.

Whilst most of the provisions were mandatory, there were some areas where the Directives permitted a policy choice and these aspects were the focus of consultation with stakeholders. The changes to procurement law should be of particular interest to small and medium size businesses, which may be provided with better access to public procurement markets as a result. In Ireland, the Directives will be transposed into law by way of a Statutory Instrument (SI), which is awaited.

Directive 2004/18/EC is repealed by Directive 2014/24/EU on Public Procurement. Directive 2004/17/EC is repealed by Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors. A third directive Directive 2014/23/EU applies to the awarding of Concession Contracts and does not replace any earlier Directive. In the 2004 Directives, public contracts were thoroughly regulated, but Concession Contracts were not subject to the same degree of regulation leading to market distortions, hence this Directive. Its aim was to create an appropriate legal framework for Concession Contracts ensuring EU wide market access and fair procedures.

The new rules aim for the simplification of administrative procedures for procurement, with a view to making them more flexible for businesses and public purchasers. It is anticipated that the new rules will assist in the implementation of both environmental policies and measures intended to stamp out corruption and conflicts of interest.
Small and medium sized businesses are the hoped-for beneficiaries of the new procedures, which should allow the awarding of contracts to a number of smaller businesses, instead of one large contract being awarded to a large business. New lower turnover limits will make this feasible.

The European Single Procurement Document (ESPD) was adopted in January 2016 and intended to replace the different tendering processes that are used across the EU. This should assist in reducing the administrative burden that is an issue for small and medium size businesses in particular and allow for enhanced cross-border tendering procedures.

2016 will see the transition towards e-procurement advance significantly, with electronic communication for some phases to be mandatory by April 2016. This includes the mandatory electronic availability of tendering documents and electronic notification of opportunities, with e-submissions to be mandatory by 2018 for contracting authorities. It is hoped that e-procurement procedures will become increasingly interoperable and standardised as time progresses.

April 2016

For further information please contact:

Cathie Shannon
Associate
T: +353 (0) 1 536 9629
E: c.shannon@beale-law.com