

# New public procurement regulations come into force

At the end of January 2006 the long-awaited new public procurement and utilities regulations came into force. The public contracts regulations implement the European Commission's consolidated directive (which was adopted in March 2004) into UK law and bring together the three old separate regulations for works, supplies and services into a single text. The utilities contracts regulations are also updated in line with a parallel utilities directive. Contracting authorities and utilities should broadly welcome this legislative change which seeks to consolidate, clarify and modernise public procurement practices. Jill Marsal, an Associate in the Public Procurement Group at Pinsent Masons, said, "Contracting authorities and utilities should take a good look at the new

regulations. Now is the time for them to put their houses in order.

Private sector bidders will be able to challenge wrongful award decisions more easily from now on with the express introduction of a standstill period in the regulations. Contracting authorities and utilities should therefore grasp this opportunity to give their purchasing procedures a health check and to adapt them to the detailed requirements of the EU rules."

Whereas utilities were expressly subject to rules on framework contracts under the old regulations, public sector contracting authorities were not. The rules applying to contracting authorities' framework contracts have now been expressly set out for the first time and in so doing have become stricter frameworks must now not generally

exceed a term of 4 years and their terms must be determined at the outset.

The new Regulations also set out new standstill and debriefing obligations for contracting authorities, following the European Court of Justice's decision in Alcatel. The purpose of these changes is to allow an aggrieved bidder a reasonable chance to consider it's situation, and, where relevant, to bring an action against the contracting authority before it concludes the contract.

In line with the aim of modernisation, the new Regulations place more emphasis on the use of e-procurement. For example, contracting authorities can now benefit from shorter time-scales when sending contract notices electronically, and can also detail

their own procurement activities on a website known as a "buyer profile". Two new electronic purchasing tools are also now regulated, namely, dynamic purchasing systems (DPS) and electronic auctions.

The Regulations also introduce a new procedure known as the "complex dialogue". Although it is only available in limited circumstances for the procurement of "particularly complex" contracts, this procedure has the advantage of allowing contracting authorities to benefit from the input of those participating in the tender process.

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