

## Key features of the New Regulations

Much of the new Public Authorities Contracts Directive (2014/24/EU: the “Classical”) and the Utilities Directive (2014/25/EU: Utilities) reflect the existing framework of procurement law. The reforms across both Directives are designed to improve the effectiveness of the regime and to codify recent procurement case law.

The incremental changes in these Regulations are intended to help streamline public procurement processes and embed more simplified and flexible rules for the selection of suppliers. This should allow public bodies to carry out procurement faster and with less 'red tape'. In broader economic terms, the new features can facilitate better value for money outcomes for the taxpayer from public procurement and facilitate greater SME participation and access to public procurement opportunities.

These Regulation provides for, among other things, the following:

- There is scope to take account of economy-wide strategic policy goals in the areas of environmental, social and labour law compliance. These obligations can be included in clauses in public contracts with the proviso that the clauses be linked to the subject-matter of the contract in question.
- A new Light Touch regime is provided for covering mainly social, health and educational services (“services to the person”) for contracts above €750,000. The rules and procedures in the regime are intended to maximise flexibility in the conduct of procurement in these areas (designed CPV codes in the Directive) while adhering to the key procurement principles of transparency, equality of treatment etc.
- Public bodies can be required to use OGP’s (or another designated central purchasing bodies in the State) procurement arrangements including, frameworks or under dynamic purchasing system.
- Changes intended to improve efficiency and effectiveness in the procurement process include the following:
  - electronic methods of communication is now mandated in parts of the award process;
  - use of a self-declaration (European Single Procurement Document) of compliance with selection and exclusion criteria by suppliers to reduce red tape;
  - reduction in the time limits for receipt of tenders by 30%;
  - explicitly allowing prior discussion with suppliers and independent experts, with safeguards against distorting competition or violating transparency and non-discrimination principles;

- simplifying the use of dynamic purchasing systems: the main features of DPS include : no time limit on duration; no need to advertise call-off contracts; suppliers can be added at any time; entirely electronic system.
- The Regulations include provisions to encourage greater access to SME as well as to persons with disabilities including:
  - the discretion to divide public contracts into lots, with the proviso that opting not to lot contracts must be explained in the procurement documents;
  - provision for “consortia bidding” to encourage SME involvement
  - financial capacity criterion is now less demanding; it is generally limited to twice contract value;
  - reform of the rules for Sheltered Workshops to encourage greater take-up; reduction in the percentage of employees with a disability from 50% to 30% and the inclusion of “disadvantage” in addition to “disability”
  - particular contracts can be ring fenced (reserved) for social enterprises under certain conditions.
- The current grounds for excluding suppliers (organised crime; corruption; fraud; money laundering) have been expanded to include terrorism; child labour; human trafficking.