



Procurement Policy Note: Ensuring compliance with wider international obligations when letting public contracts

Information Note 01/16

17th February 2016

Issue

1. This PPN sets out contracting authorities' international obligations when letting public contracts. It makes clear that boycotts in public procurement are inappropriate, outside where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government.

Dissemination and Scope

2. This PPN is directly applicable to all contracting authorities, including Central Government, Executive Agencies, Non Departmental Public Bodies, wider public sector, local authorities and NHS bodies. Please circulate this document (for information) within your organisation, including where relevant to Executive Agencies and Non Departmental Public Bodies and other contracting authorities for which you are responsible, drawing it to the attention of those with a purchasing role.

Advice

3. The UK has a longstanding and widely accepted policy that applies to all public contracts, of ensuring value for money in public procurement, as set out in HMT's *Managing Public Money*¹. Value for money is defined as securing the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought. That definition has recently been updated to make clearer that the key factor is whole life cost, not necessarily the lowest purchase price.

¹ See Annex 4.6 of *Managing Public Money* for the full VFM definition
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/454191/Managing_Public_Money_AA_v2_-jan15.pdf

4. Further, wider policy objectives (such as economic or employment-related considerations) can be pursued through the procurement process where they are linked to the subject-matter of the contract. The new Public Contract Regulations (PCR) 2015 also provide flexibility for authorities to take account of wider matters in the procurement process, such as social and environmental factors. Contracting authorities may apply these flexibilities where relevant, ensuring always that all suppliers are treated equally and without discrimination.
5. The UK's regime of procurement rules (the PCR 2015), derives largely from the EU procurement directives and the WTO Government Procurement Agreement (GPA) - an international market access agreement. These rules impose a legal obligation on public authorities when awarding contracts above certain thresholds to treat EU and GPA² suppliers equally, and not discriminate by, amongst other things, favouring national suppliers. There are remedies available through the courts for breaches of these rules, such as damages, fines and ineffectiveness (contract cancellation). The European Commission can also bring legal proceedings against the UK Government for alleged breaches of EU law by a UK contracting authority. This can lead to formal action being required to rectify the breach, and substantial fines against the Government. The Government will always involve the relevant contracting authority in these proceedings.
6. Suppliers from "third countries" (which are neither part of the EU, nor the GPA or other international free-trade agreements with the EU) do not enjoy access to our remedies system if they are discriminated against. However, third country suppliers could, potentially, offer the best value for money outcome, so the UK Government expects that its authorities will deal with bids from such third countries in the same way as EU or GPA countries.
7. Public procurement should never be used as a tool to boycott tenders from suppliers based in other countries, except where formal legal sanctions, embargoes and restrictions have been put in place by the UK Government. There are wider national and international consequences from imposing such local level boycotts. They can damage integration and community cohesion within the United Kingdom, hinder Britain's export trade, and harm foreign relations to the detriment of Britain's economic and international security. As highlighted earlier, it can also be unlawful and lead to severe penalties against the contracting authority and the Government.

Contact

8. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk (telephone 0345 410 2222, email info@crowncommercial.gov.uk)

² The current signatories to the GPA are: Armenia, Aruba, Canada, the EU, Iceland, Israel, Japan, Hong Kong China, Liechtenstein, Montenegro, New Zealand, Norway, Singapore, South Korea, Switzerland, Chinese Taipei, and the US.