

UK transposition of the new EU procurement directive on utilities contracts

Cabinet Office

RPC rating: fit for purpose

Description of proposal

The proposal is to transpose into UK regulations the new EU procurement directive on utilities contracts. The utilities to which the directive applies are those in the energy, water, transport and postal services sector. The impact assessment (IA) states that the directive delivers on all of the Government's priority objectives for the negotiations and provides for a more modern, flexible and commercial approach for utilities contracts. The directive removes or reduces regulatory requirements on business in the following key respects:

- (a) Utilities will no longer have to submit detailed annual statistics to the European Commission.
- (b) Electronic catalogues will be expressly permitted.
- (c) Rules on dynamic purchasing systems are simplified and new rules will allow preliminary market consultation.
- (d) Provision for greater use of supplier self-declarations to provide proof of status.

There will, however, be a small cost to utilities as a result of some service contracts now being obliged to follow either full procurement rules or the new light-touch regime for certain service contracts.

The department states that its implementation maximises simplification and flexibility, avoids gold plating and does not go beyond EU minimum requirements.

Impacts of proposal

Costs

The department estimates there to be one-off familiarisation costs of £0.053 million. The cost of complying with additional procurement processes, such as the requirement to advertise above threshold contract opportunities, is estimated to be

£0.234 million each year. These costs are based upon estimates of the number of contracts that will go through the new processes (24 utilities contracts plus 7 contracts specifically in the ports sector), annual statistics returns and consultation with industry, and estimates provided by businesses of the cost involved.

Benefits

The department has monetised the benefits to business of no longer having to submit detailed annual statistics on their procurement activities. Analysis of the latest compliance cost reports suggests a saving of £0.011 million each year, uprated for inflation. The department describes a number of other benefits. These include other administrative savings, for example from the use of electronic catalogues and the simplification of rules, an increase in service quality and improved legal safeguards. The department has, however, not been able to monetise these.

This gives an overall net cost of £0.223 million each year, or an NPV of -£1.97 million over ten years (table on page 10). An analysis of annual statistics returns by utilities indicates that about 60 per cent of utilities are in the private sector. This proportion is applied to the figures to arrive at a business NPV of about -£1.2 million. The EANCB corresponding to this is £0.14 million.

Quality of submission

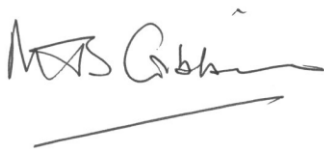
The department has provided a clear and reasonable assessment of the impacts of the proposal. The department has monetised the costs of the proposal and, where proportionate, the benefits. The impact assessment could be improved further in three respects. First, the IA could explain more clearly the extent of the department's latitude in the way it can implement the directive (paragraph 10). This would help support further the position that the proposal does not go beyond minimum requirements (paragraph 8). Secondly, the IA could provide further consideration of the likely scale of the non-monetised benefits to indicate whether, overall, this policy is likely to be beneficial to business, as is suggested by the narrative of the IA. Thirdly, the IA could present more information on the results of the consultation and how it directly supports the estimates provided.

Initial departmental assessment

Classification	Non-qualifying regulatory provision (EU)
Equivalent annual net cost to business (EANCB)	£ 0.14 million
Business net present value	-£ 1.21 million
Societal net present value	-£ 1.97 million (benefits not fully monetised)

RPC assessment

Classification	Non-qualifying regulatory provision (EU)
EANCB – RPC validated	£ 0.14 million
Small and micro-business assessment	Not required (EU)



Michael Gibbons CBE, Chairman