



Department
of Health

Procurement News

July 2017

Welcome to 'Procurement News'.

This newsletter is for all colleagues within the Department of Health and its ALBs who have an interest in procurement and commercial activities.

There was no newsletter issued in June as there was not a great deal going on during the election period and Purdah.

You may forward to colleagues within the health family who have an interest in commercial issues. If forwarded to you, you can [sign up to receive future editions](#).

If you have anything to contribute, feedback or suggestions for future stories please [get in touch](#).

Rick Webb

Procurement Policy Manager
Department of Health

Senior appointments in the Commercial Division

We welcome Melinda Johnson to the division as our new Commercial Director. Melinda is looking forward meeting health system colleagues within ALBs to seek views on how to maximise our impact, position and ambition.

We have also appointed our Deputy Director of Procurement, David Rowell whom we expect to be joining us in early September. Anthony Doyle will remain in post until David Rowell starts in order to provide a handover.

Crown Commercial Service customer updates: June and July 2017

The latest issue (published 9th June 2017) is available [here](#) and the latest issue (published 3rd July 2017) is available [here](#).

Procurement Policy Notes (PPNs)

All Procurement Policy Notes (PPN's) are published [on the CCS website here](#).

No new PPNs have been published since the last edition.

PPN activity in the pipeline includes:

- An update to the standard Selection Questionnaire (SQ). This PPN will include the statutory guidance, the SQ template and a separate list of the questions. This is expected in July.
- An update to Cyber Essentials (which is likely to consist of an enhancement to the FAQs)
- An update to the 2014 PPN on tax compliance to reflect PCR provisions
- A PPN on Modern Slavery (CCS is in discussion with the Home Office)

Procurement Policy Working Group (PPWG)

This group provides a forum for the development and sharing of procurement policy best practice across central government departments. The last meeting took place on 6th July.

The CCS Domestic Procurement Policy Team has provided the following updates on key policy areas:

Brexit

We continue to work with the Department for Exiting the EU (DExEU) to define the public procurement negotiating objectives and red lines for the Brexit negotiations. We are scoping the changes to our current procurement regulations that will need to be made under the Great Repeal Bill to fix provisions that become legally inoperable as a result of EU exit, and will share these with departments in due course. A Cabinet Committee write-round is being made ready for issue shortly after the General Election, seeking clearance of our proposed general approach to UK accession to the WTO Agreement on Government Procurement (GPA) as a party in our own right, to avoid the UK falling out of the agreement on EU exit.

Standard Selection Questionnaire (SQ)

The SQ is currently being revised and we are planning to publish the new version in July. We have incorporated comments made by users in the deviation reports and in separate correspondence. The PPN will include the statutory guidance, the SQ template and a separate list of the questions. This will allow the questions to be easily transferred onto e-platforms.

e-Procurement timetable

PCR 2015 mandates the use of a number of e-procurement elements for all contracting authorities by April 2018. We have already implemented several of these. For example, we have an e-notification system (Contracts Finder) and procurement documents are being published alongside the contract notices.

The outstanding element is the electronic submission of bids, known as e-submission. The Regulations require all contracting authorities to use electronic means to accept bids by April 2018. This includes the emailing of documents as well as submission via e-procurement systems.

Contracts Finder (including OCDS and Brexit)

Further development of Contracts Finder is underway. This aims to cover development work needed to move it from public Beta to a live service. It will address a backlog of user needs, as well as further implementation of the Open Contracting Data Standard. Separately, as part of the public procurement Brexit programme, we will conduct contingency planning should the UK use of OJEU/TED cease following EU exit.

Subcontracting

We now have 38 suppliers registered on Contracts Finder and just under 25 supply chain notices have been published to date. Feedback has been very positive, e.g. Servest, who published a supplier innovation day, received nearly 200 views and of 69 responses to their survey, 37 said they had found out about the innovation day through Contracts Finder. During our next phase of development, Contracts Finder will be enhanced to enable easier identification of supply chain notices. We are planning to expand our pilot and departments are requested to encourage their key suppliers to support this initiative. Contact [Jo Dale](#) for more information.

Anti-corruption (Beneficial Ownership)

The cross-govt consultation on BEIS' proposals for an Overseas Entity Beneficial Ownership register closed on 15 May 2017 and the responses are now being analysed. As you know, the register is proposed to cover both property and procurement and the analysis will inform the shape of new policy including how the register will operate. We hope those of you who wanted to respond to the Call for Evidence had the opportunity to do so. We are working closely with BEIS to test their emerging position on Beneficial Ownership, bearing in mind the commitments made at the Anti-Corruption Summit in 2016 and the legal framework for procurement.

Anti-corruption (Contract Debarment)

CCS is motoring ahead with a trial of policy proposals on Contract Debarment, again this commitment emanated from the Anti-Corruption Summit last year. We are running a pilot in CCS to test how the policy might work in practice and to draw out any issues before we finalise the policy scope and PPN. Any questions on this, please get in touch.

Industrial strategy

Following publication of the Industrial Strategy Green Paper we are now analysing the consultation responses. We are also implementing the procurement commitments contained in the Green Paper. These include:

- setting out the conditions of success for innovation in a new PPN
- introducing a reporting mechanism on adoption of the Balanced Scorecard on major projects (from end of May, central government only)
- simplifying contract terms and conditions
- trialling supplier feedback approaches on the Crown Marketplace

The SME agenda is likely to remain a point of focus, post-election.

General Data Protection Regulation (GDPR)

GDPR will apply in the UK from 25 May 2018 and the UK's decision to leave the EU will not affect its commencement. Like the Data Protection Act, the GDPR applies to 'personal data'; however, its definition is more detailed and information such as an online identifier, e.g. an IP address, can be classed as personal data. The Information Commissioner's Office has published [on-line guidance](#) for organisations, giving 12 steps to take now. As the implications relating to both supplier information and personal information which suppliers hold on our behalf becomes clearer we plan to share this with you.

Crown Commercial Services: Public Sector Resourcing Framework to replace Contingent Labour ONE

This news story is featured in last month's CCS Newsletter but is of particular interest. Following extensive engagement with customers and suppliers, [the OJEU notice for Public Sector Resourcing \(RM3749\)](#) has now been published to procure a replacement for Contingent Labour ONE, to meet the needs of customers with contingent worker requirements across the public sector.

The new approach will ensure greater transparency of costs and help ensure that our customers get the best workers, with the right skills, at the right price, quickly and easily. Based on customer feedback and market intelligence there will also be tailored supply chains to help you access SME suppliers. The main features will be:

- a range of ways to directly access workers with access to non-agency supply routes to talent (i.e. direct hire, talent pooling, pre-identifying workers and other innovative market practices)
- stronger governance, continuous improvement, ongoing innovation and savings
- a focus on streamlining the end-to-end process from approval to vetting to payment in line with good industry practice
- automatic "real time" benchmarking to ensure customers are paying the right amount for workers by location and job type
- performance management of workers

Framework award is expected by the end of 2017, with mobilisation in early 2018 and implementation in mid 2018.

In the meantime, you can continue to use both Contingent Labour ONE (RM960) and Non-Medical Non-Clinical (RM971) to access temporary staff across a wide range of business areas.

[Learn more about Public Sector Resourcing and access a detailed Q&A booklet](#)

Gareth Rhys Williams requests support for a Simplification Initiative

Gareth notes that the richness and variety of Government's contractual landscape is not necessarily a good thing. The number of contracts used across government incurs extra legal expense and risks confusing staff and suppliers.

The Model Services is intended for the biggest, heaviest contracts. In most situations a lighter contract would be more appropriate. There is also a range of other legal documents are in common demand.

The following actions are proposed

- 1) Develop a short-form contract for buying goods and services.

Based on current work underway at CCS to develop a shorter, more modern set of terms and conditions based on best practice in other organisations tailored to government needs.

- 2) Develop a library of commonly used legal documents

Potential documents are T&Cs, Novation Agreements, Guarantees/Deed of Guarantee, Non-Disclosure Agreements, Concession Agreements, Memoranda of Understanding and Letters of Intent.

- 3) Continue to promote and update the Model Services contract for high-value, high complexity agreements

- 4) Engage Departmental input through the Procurement Policy Working Group

The DH representative is Rick Webb.

Event: UK Health Show 2017

The UK Health Show 2017 takes place at Olympia London on 27th September. It is the largest free-to-attend one-day healthcare event in the UK. It brings together senior healthcare professionals and decision makers together to help the NHS and the wider sector promote and improve service delivery for better healthcare outcomes across the UK.

Over 4,000 delegates will come together to network with peers, engage with suppliers and learn from best practice case studies across four focused show areas; Technology, Commissioning, Procurement and Cyber Security

Procurement in Healthcare connects the NHS with partners and suppliers as it seeks to leverage its purchasing power to achieve the best value of goods and services. The Procurement in Healthcare Conference Theatre will include sessions on:

- Design, development and delivery of the Future Operating Model (FOM)
- Combining resources in the procurement of common goods and services
- Supporting operational productivity to reduce unwarranted variation
- Enforcing clinically led category management and evaluation at a national level
- A core set of standardisation NHS products in 2017 – how is this playing out in practice?
- Scan4Safety and GS1 – next steps and how Trusts can benefit
- NHS Standards of Procurement – benefits of accreditation

Click [here](#) to view the full agenda.

Knowledge Hub

Knowledge Hub is a digital platform for sharing information on best practice, skills, and events amongst colleagues and other likeminded professionals.

The cross departmental Government Commercial Function (GCF) Community on the Hub has been established to allow people to share the wealth of commercial knowledge that exists across government, highlighting examples of best practice, advertising events and developing the skills needed to achieve the stated aim of becoming the best commercial function in the United Kingdom.

The content might be of interest. You can register at <https://khub.net/register>

Bevan Brittan: Price/Quality Evaluation

Emily Heard, Partner at Bevan Brittan, has written an interesting article on Price/Quality Evaluations. The article looks at legal considerations when choosing a model and explores what recent analysis tells us about price evaluation.

The article can be accessed [here](#).

Legal Issue: Discriminatory provisions in Specifications in the Slovenian plasma case

Article provided by Government Legal Department (GLD).

A recent ECJ case serves as a reminder to procurement officials when setting tender specifications, particularly with regards to treating providers equally and non-discriminatorily and where the specification results in the beneficial treatment of national suppliers on the basis of a national requirement.

The case in *Medisanus d.o.o. v Spolsna Bolnisnica Murska Sobota* (Case C-296/15, 8 June 2017) focused on the procurement for the supply of medicinal products in Slovenia by a Slovenian hospital, which was acting as the contracting authority. The disputed clause required that the class of medicinal products being procured must be manufactured on the basis of Slovenian blood plasma.

The procurement documents reflected a requirement under national Slovenian law. Specifically, Slovenian domestic statute only permits imports of plasma from other EU Member States if the plasma collected in Slovenia is insufficient to cover the needs of the population. The ECJ held that such a requirement was not compatible with various provisions of Directive 2004/18/EC and Article 34 of TFEU. As such the procurement was held to be unlawful by the ECJ.

In particular, the ECJ highlighted that:

- The national requirement to use products that were only derived from Slovenian blood plasma was inherently discriminatory, and prevented any provider using products derived from non-Slovenian plasma from participating in the tender.
- By not adding “or equivalent” after imposing the requirement that the products had to be Slovenian plasma-based, the hospital was likely to have prevented suppliers with analogous products (i.e. those derived from plasma from other EU Member States) from participating in the procurement.
- Whilst the national legislation pursued a legitimate objective of public health protection, the measure proposed by the hospital did not contribute in a meaningful way to encourage the Slovenian population to make voluntary blood donations. Conversely, the measure was incompatible with the underlying objective of EU self-sufficiency.

This judgment emphasises the duties on contracting authorities to make sure that all bidders are treated equally and fairly. It is clear that equal access for tenderers and competition in procurement processes are key principles from which any deviation will be strictly interpreted by the courts.