

Whitepaper Procurement Conference

Brexit: Implications for public procurement

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Ferrygate



Brexit

- 1. What is the impact of Brexit on existing contracts or frameworks, e.g. supply chains or mini competitions?**
- 2. What changes and risk assessments must you consider for your new tender competitions?**

Orderly Brexit



Orderly Brexit

EU procurement rules will apply to procurement procedures during and ongoing at the end of transition period

Draft Withdrawal Agreement (Arts 76 & 77)

- *EU law principles & directives (including non-discrimination ... on the grounds of nationality) will continue to apply to:*
 - *Procedures commenced in EU/UK before end of transition period*
 - *Call off procedures under framework agreements:*
 - *concluded in EU/UK before the end of the transition period that have neither expired nor been terminated on the last day of the transition period; or*
 - *concluded after the end of the transition period in accordance with a procedure commenced in EU/UK before end of transition period*
- *Remedies Directives continue to apply to [above] procedures*

During transition, UK procurement legislation still applies

Orderly Brexit

- Future relationship



Orderly Brexit

"In so far as it is covered by [..GPA Annexes/Notes..] a contracting authority shall accord to the works, supplies, services and economic operators of the signatories to those agreements treatment no less favourable than the treatment accorded to the works, supplies, services and economic operators of the European Union."

Regulation 25, European Union (Award of Public Authority Contracts) Regulations 2016

Orderly Brexit

VIII. PUBLIC PROCUREMENT

- “48. Noting the United Kingdom's intention to accede to the WTO Government Procurement Agreement (GPA), the Parties should provide for mutual opportunities in the Parties' respective public procurement markets beyond their commitments under the GPA in areas of mutual interest, without prejudice to their domestic rules to protect their essential security interests.
- 49. The Parties should also commit to standards based on those of the GPA ensuring transparency of market opportunities, public procurement rules, procedures and practices. Building on these standards, the Parties should address the risk of arbitrary behaviour when awarding contracts, and make available remedies and review procedures, including before judicial authorities.”

Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom, 22 Nov 2018

Disorderly Brexit



Disorderly Brexit

- WTO trading rules
- GPA
- UK legislation
 - *Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 (SI 560/2019)*
 - *Public Procurement (Amendment etc.) (EU Exit) (No.2) Regulations 2019 (SI 623/2019)*

1. Impact on existing contracts / frameworks

- What UK suppliers do you currently have?
- Do Irish suppliers have a UK supply chain?
- What contractual arrangements are in place?
- Do suppliers deliver across borders?
- How might they be affected by Orderly or Disorderly Brexit?
- Might authority be exposed to additional cost or risk or delays?
- How will contract be performed in the future?

1. Impact on existing contracts / frameworks

Orderly	Disorderly
<p>1. Contract / single member framework</p> <ul style="list-style-type: none">-Transition-Post-transition	<p>3. Contract /single member framework</p>
<p>2. Multi-party framework</p> <ul style="list-style-type: none">-Transition-Post-transition	<p>4. Multi-party framework</p>

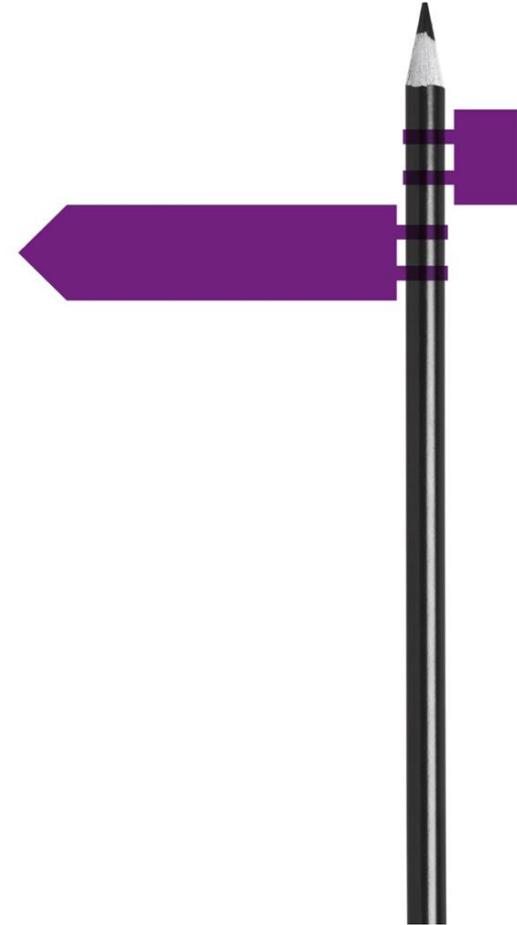
1. Impact on existing contracts / frameworks

– Key issues for existing contracts/frameworks

- Modification (*Regulation 72*)
- Termination (*Regulation 73*)
- Force Majeure
- Frustration
 - *European Medicines Agency*

2. What changes/risk assessments must you consider for new tender competitions?

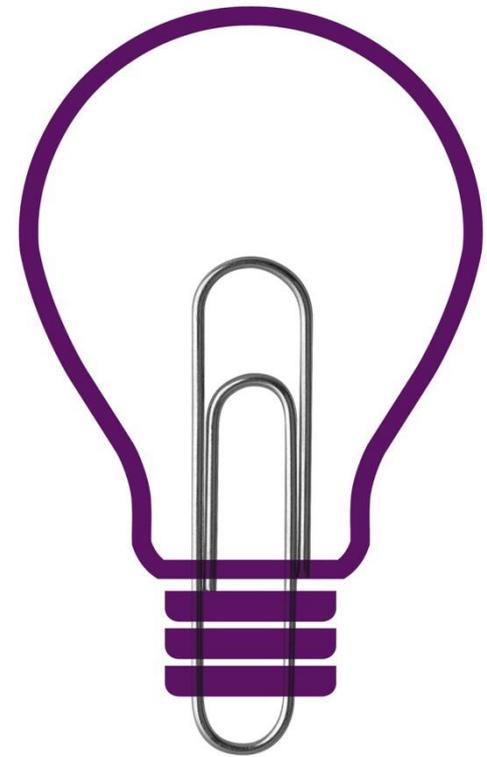
- Below threshold procurement
- Maintain equal treatment
- Watch out for qualified bids
- Robust Contract terms



2. What changes/risk assessments must you consider for new tender competitions?

- Contract terms
 - *Anticipate contract issues*
 - *Future-proof contracts*
 - *Do not discriminate (+ or -)*
 - *Costs*
 - *Delays*
 - *Termination*
 - *Data Protection*

- Review clauses



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