On 27 September 2011, the European Parliament Internal Market and Consumer Protection Committee (the “Committee”) approved a non-legislative Resolution as a direct response to the European Commission (the “Commission”)’s Green Paper consultation on the modernisation of the EU public procurement policy (the “Green Paper”), published earlier this year.

The Resolution

The Resolution focused in particular on the difficulties faced by SMEs in accessing the public procurement market, being one of the key areas highlighted for change by the Green Paper. SMEs currently only win approximately 31-38% of public procurement contracts, by value. The Committee considered that access for SMEs could be improved both by dividing public contracts into lots, and also by use of an electronic ‘passport’ that proves that the holder complies with EU rules on public procurement. The electronic passport would assist SMEs by making tendering less complicated and time-consuming. In addition, the Resolution suggested that the ‘lowest price’ criterion should no longer be the determining factor when awarding public contracts and should be replaced in its entirety by award based on the ‘most economically advantageous tender’. The broader criteria would help all bidders, including SMEs, propose innovative solutions in their tender submissions. For more information on the Green Paper in terms of changes to improve access for SMEs, see our “SME- Friendly Procurement” blog from our Green Paper blog series, here.

The Green Paper

In addition to improving access to public procurement markets for SMEs, the Green Paper asked a large number of questions on a wide-range of issues including possible changes to the current scope of the public procurement regime, improvements to current procedures, joint procurement and co-operation between separate contracting authorities, measures to take account of wider policy objectives such as environmental factors and social objectives, as well as whether to develop rules to address issues such as preventing favouritism and corruption within the public procurement process. For more information on the Green Paper, as it addresses some of these topics, please see the links to our Green Paper blog series: “For a modern Procurement Regime”, “Public Co-operation and Joint Procurement”, “Small Contracting Authorities”, and “Anti-competitive Procurement”.

The Feedback- the Scottish Government

On 22 March 2011, the Scottish Government submitted its formal response to the Green Paper. Of particular focus was the position of smaller contracting authorities within the EU public procurement system (given the typically small size of Scottish public bodies) as well as the treatment of shared services. The Scottish Government urged the Commission to consider “broader interpretation of “value for money” to enable contracting authorities to take account of local economic impact”. In relation to SMEs, the Scottish Government emphasised its policy to encourage contracting authorities to monitor their spend with SMEs to ensure that their procurement activity does not negatively impact on SMEs. It is suggested that this is a more effective approach than setting a target for the percentage of public sector contracts to be awarded to SMEs. In addition, the Scottish Government does not take the view that

The Scottish Government emphasised its policy to encourage contracting authorities to monitor their spend with SMEs to ensure that their procurement activity does not negatively impact on SMEs.
The Feedback - the UK

On 25 July 2011, the Cabinet Office published the UK Response to the European Commission’s Green Paper on modernisation of EU public procurement policy. Similarly to other respondents to the Green Paper consultation, the UK is supportive of the proposals to simplify the EU procurement regime and accords with the UK’s procurement policy objectives such as overcoming the difficulties faced by SMEs highlighted above, reducing mandatory timescales and improving the position in the market place for employee-led organisations/mutuals.

A wider proposal to revise the EU public procurement rules, which will include responses by all MEPs to the Green Paper, will be published this autumn so watch this space!

Contact Us

This legal briefing sets out a summary of the law at the time of writing and is for information purposes only. It should not be regarded as legal advice but if you would like further information please contact:

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The Feedback - the Commission

The Green Paper consultation period came to an end on 18 April 2011 with 623 responses from a wide variety of organisations across the EU. The Commission published a summary of the responses on 24 June 2011. The three areas which generated the greatest debate were (i) the need for a generalised negotiated procedure (ii) raising threshold values, and (iii) the distinction between level A and level B services. The responses showed a strong view that the current procedures should be simplified and made more flexible. In particular, respondents wished there to be flexibility in the sequence of the examination of selection and award criteria with a desire for a contracting authority to be permitted to take account of its previous experience with a particular bidder. Most respondents wished to retain the distinction between works, supplies and services. There were however, also mixed views on various issues such as the use of public procurement to support other policy objectives and the A/B services distinction. For more information on the outcome of the consultation process, please see our blog here.