

The Weird and Wasteful World of EU Procurement Legislation

There has been much scaremongering about the scale of job losses were the UK to leave the EU. The reality, especially in the small business sector, is very different. Nigel Moore runs a specialised technical consultancy business and has experienced considerable frustrations when competing for business within the public sector, thanks to EU legislation. Nigel writes:-

Purchasing by the Public Sector and applicable privatised industry (utilities, transport and postal services) from, in Eurospeak, economic operators (aka private sector etc.) has to comply with EU procurement directives (laws). These rules are intended to standardise purchasing (or procurement) practices in the EU and open up the markets; they are enacted into UK law above defined thresholds.

Custom and practice, and successive UK governments have tended to 'gold plate' implementation with restrictive interpretations and some extension below the EU mandated thresholds. EU procurement legislation and its' impact is a complex and somewhat esoteric field, with the lawmakers far removed from the purchasing 'front line' and consequently the detrimental effects go largely unreported. Also changes to the rules only occur when the EU Commission wills it and involves considerable time delay (years) as all member states are involved.

The EU rules mandate the procurement process that must be followed by the buying organisation. The rules include requirements for: advertising for potential suppliers (tenderers) in the European Journal; following defined timescales; how the goods or services required are described and specified; how suppliers are pre-qualified before being invited to submit tenders; how these tenders are evaluated

(for technical and commercial compliance); how contracts are awarded; and rights of appeal by unsuccessful tenderers (potential suppliers). Under the rules, purchasing is an involved, time consuming process. If an apparent mistake is made, an unsuccessful tenderer can appeal ultimately as far as the European Court of Justice, which has developed a considerable body of case law. Recent changes are in the pipeline for procurement legislation but it is too earlier to say what user and business friendly effects they will actually produce.

Pity then the buyers involved with this process and the potential suppliers. Much of their time is spent carefully following the process including regulations and case law, and is unproductive because it does not improve the actual purchase; for buyers this includes processing unsuccessful potential suppliers and their tenders or, for potential suppliers, trying to bid for work that ultimately they don't win or even pre-qualify.

Buyers often reduce the number of businesses invited to tender by pre-qualification using comprehensive questionnaires. Consequently good potential suppliers, usually smaller businesses, are often excluded using somewhat arbitrary criteria not necessarily related to carrying out the contract before they know exactly what the work is. And pre-qualification tends to be in secret so potential suppliers may never know why they are not being invited to tender. Utilities can also use a pre-qualification scheme to identify potential suppliers to invite to tender instead of advertising details of the prospective purchase. Not helpful to suppliers; you don't know what work is coming up, when or how tenderers will be selected to tender. Having been selected to tender, potential suppliers are all then deemed equally capable of carrying out the work, to the required standard, even if during tender evaluation, under greater scrutiny, the opposite is indicated.

It is also common cut down how often buyers place new contracts by aggregating small purchases into single larger framework contracts or agreements that will run for several years. Sometimes the purchases have little in common. These frameworks tend to be only suitable for larger businesses offering a wide range of goods or services, and exclude the smaller, specialist or innovative businesses. Until recently trying to provide access to smaller businesses by dividing up contracts into smaller lots was prohibited. Sometimes a larger company has overall higher costs, and not the specialised skills required to cover everything required; the system then rewards some less ethical practices like exaggerating capabilities.

In this country, in compliance with the EU rules, award of a contract to a compliant tenderer has tended to be based largely on lowest purchase cost. Consequently, you get the minimum of what you've asked for, not something better (there is no way to evaluate it) and probably some contractual arguments later. Socio-economic factors, like closure of a local factory (as happened in Derby over train manufacture) or loss of expertise or career opportunities are not considered (although actually allowed).

As a small specialised technical consultancy we have direct experience of Public Sector and utility (transport) procurement over many years. We also discovered that the struggles we faced were replicated elsewhere in the Public Sector for small businesses trying to win work. And it was a fruitless task trying to get anyone interested in the difficulties. It is very disheartening after working hard on the most difficult work, having done everything the Client wanted and then to know we will never have a chance of competing to get more work; framework agreements now being place. In some cases we knew well who would be doing the work and how we could, if allowed to, have done a much better job at lower cost. Yet we could very successfully compete

overseas.

Obviously shutting down much of the economy to real competition and innovation carries costs, not least that many small innovative businesses struggle to be viable, or may never start in the first place; so there are knock-on effects far removed from the EU procurement legislation, which itself costs the Public Sector far more than it should in running EU compliant procurement processes.

The EU procurement rules create a playing field tipped heavily towards big businesses that excludes smaller and innovative businesses from much potential work that they could carry out. Further, they are complex, esoteric, slow, time and resource wasting and create avoidable stress for all those involved. Of course we could do better in devising more streamlined mainstream Public Sector procurement, for example, taking out 70-80% of the workload, which facilitates transparency, fairness, innovation, encourages entrepreneurial businesses and reduces risks. Procurement people get excited when they see what can be done.

The bureaucratic nature of EU legislation does not operate in the best interests of the UK's vital small business sector. It is hardly surprising that many people in Nigel's position support our withdrawal from the EU. As the recent Global Britain/Democracy Movement report "The Scaremongers" shows, remaining within the EU, rather than withdrawing from it, is the biggest threat to UK employment.

Photo by Eoghan O'Lionnain 