Cabinet Office

Procurement Policy Note – Applying Exclusions in Public Procurement, Managing Conflicts of Interest and Whistleblowing

Information Note PPN 04/21 May 2021

Issue

1. Although the UK enjoys higher levels of integrity than many other countries, we are not immune from the effects of corruption or its perception. To safeguard citizens, public funds and public bodies from corruption in public procurement procedures, the procurement rules provide for the exclusion of bidders who have committed certain serious offences and in other specific circumstances. The integrity of commercial actions must be protected against actual or perceived conflicts of interest. In addition, the Civil Service Code provides a framework for the process to be followed by civil servants who are concerned about any other perceived wrongdoing in a procurement procedure.

2. The procurement regulations require Public Bodies to take appropriate measures to prevent, identify and remedy conflicts of interest arising in procurement procedures. If measures are not taken, conflicts of interest can have far-reaching consequences, including undermining public confidence in the integrity of organisations and Government as a whole. In 2020 the National Audit Office and the Boardman Review recommended that additional, practical guidance be made available for all In-scope Organisations regarding the management of conflicts of interest in commercial environments.

3. This PPN replaces existing policy guidance as set out in PPN 01/19. The guidance has been revised and updated to clarify changes to the procurement regulations following the UK's exit from the EU, and provides supplementary guidance and answers to frequently asked questions to deepen commercial teams' understanding of the exclusion provisions in procurement regulations, including case law and additional support material. It also builds upon the previous PPN, with further guidance to assist In-scope Organisations to develop and enhance local strategies, systems, processes and procedures to prevent, identify and remedy conflicts of interest.

Dissemination and Scope

4. The contents of this Procurement Policy Note (PPN) apply to all Central Government Departments, their Executive Agencies and Non Departmental Public Bodies in conducting procurement procedures regulated by the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016.[1] They are referred to in this guidance as 'In-scope Organisations'. It is also relevant to the wider public sector such as local authorities and NHS bodies in carrying out procurements for public contracts, utilities contracts and concession contracts. Please circulate this PPN within your organisation, drawing it to the attention of those with a commercial and procurement role.

Timing

5. The contents of this PPN and associated guidance should be considered and, where relevant, applied with immediate effect.

Background

6. The Government has taken significant steps to strengthen its commercial capability, especially in procurement so that commercial activities deliver value for money and risks are managed. We have strong systems in place to detect and tackle corruption, but ongoing efforts are needed to maintain our capability in both central and local government. As part of this drive to tackle corruption and fraud, both in the UK and overseas, the Government has recently amended regulations to update the list of high risk countries as set out in the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (S.I. 2017/692).

7. The 2017 Anti-Corruption Strategy sets out a number of ways in which to tackle corruption including in public procurement. Government committed in the Strategy to produce and disseminate guidance to government procurers on applying exclusions in the procurement process, managing conflicts of interest and whistleblowing, and guidance (PPN 01/19) was published in February 2019. This policy note replaces the existing guidance in PPN 01/19 and provides supplementary guidance in relation to applying exclusions and managing conflicts of interest. The guidance on whistleblowing remains largely unchanged from the previous PPN.

8. The grounds for exclusion of bidders from public procurement procedures are set out in the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016. Although the UK has now left the EU these regulations remain broadly unchanged. The regulations set out the circumstances in which bidders must, or may, be excluded from a public procurement process for a variety of criminal offences and in other specific situations. They cover the grounds for mandatory and discretionary exclusion, exceptions to exclusions, duration of exclusion, and self-cleaning, as well as the methods by which the existence of grounds for exclusion can be verified.

9. The regulations also require appropriate measures to be taken to prevent, identify and remedy conflicts of interest effectively in procurement procedures. Whilst there is an existing requirement in the Civil Service Management Code for In-scope Organisations to produce their own conflicts of interest policy and guidance based on the principles set out in the Code, the Boardman Review published in December 2020 recommended that additional guidance

[1] Under the Utilities Contracts Regulations 2016, the grounds for mandatory exclusion set out in the Public Contracts Regulations 2015 are mandatory for utilities which are contracting authorities and discretionary for other utilities. All utilities, irrespective of whether they are contracting authorities, can apply the discretionary exclusion grounds set out in the Public Contracts Regulations 2015. Under the Concession Contracts Regulations 2016, the mandatory exclusion grounds apply to contracting authorities and utilities which are contracting authorities and are discretionary for other utilities. All contracting authorities and utilities, irrespective of whether they are contracting authorities, can apply the same discretionary exclusion grounds.

be produced and issued on managing conflicts of interest in procurements. The guidance outlines a framework to be adopted by In-scope Organisations in order to prevent, identify, record and remedy conflicts of interest. The framework includes the relevant processes, procedures, and appropriate checks and balances to effectively manage conflicts of interest in a commercial context. Whilst the guidance is targeted at commercial and procurement professionals within the In-scope Organisations, it also includes points of note for others outside the commercial team, including Ministers and special advisers.

Contact

10. Enquiries about this PPN should be directed to the Crown Commercial Service Helpdesk on I&S or info@crowncommercial.gov.uk.