

What will Brexit mean to UK Public Procurement?

The referendum held on Thursday 23rd June 2016 was a significant turning point in UK history. More than 30 million people voted and the result was contentious in its verdict (51.9% leave, 48.1% remain). The implications of Brexit we know will be far reaching, though exactly what those implications will be no one yet knows for sure.

On 29th March 2017 'Article 50' was triggered by Theresa May starting the UK's departure from the EU. It is a two year process and so should be concluded by 29th March 2019. However it is anticipated in reality that the process will play out over a much longer time. Article 50 has never been used by a member state before, the complexities involved in leaving the EU in reality mean that it could be difficult to have agreements not only in place but also ready in working practice by March 2019.

The implications of Brexit touch every area of UK life, though of course the public sector are at the front line of these changes.

What will the changes for UK Public Procurement look like?

There has been a lot of debate over what Brexit will look like; what sort of deal May will carve out; will the UK Government go for a 'hard' Brexit or a 'soft' Brexit...it has been a year of apprehension since the referendum, and this lack of certainty looks set to continue for the forthcoming years. The fact that the UK is the first Member State to trigger Article 50 means there is no precedent to guide us with a likely outcome, which leaves us in a state of uncertainty.

The UK general election has brought further doubt to the process; with Labour pursuing a 'soft' Brexit deal with a final vote by MPs, Conservatives pushing a 'hard' exit deal with only a review of the final deal. However what the UK Government push for in terms of a Brexit deal is subject to the agreement of the other Member States. And to add to the complexity, those other Member States may be having their own national elections during this time (e.g. Germany), the outcome of which will impact what is deemed acceptable by that Member State. So, whatever approach we pursue, it is not a case of designing a deal we want, it will a long process of hard negotiation to reach the final deal.

For UK procurement specifically, currently UK procurement legislation is borne out of EU directives. Without these EU directives in place driving the processes there could be a significant impact in this area. The question is, what?

In the period of negotiation there is unlikely to be much change. UK procurement is tightly bound to EU directives, and these ties cannot be severed quickly. However the final trade agreement that is decided on will greatly influence what the changes will be for UK public procurement.

What could a trade agreement between the UK and EU look like?

There are four main possible approaches to consider:

- 1) EEA
If the UK participates as members of the EEA (European Economic Area) then there would be no significant change to the regime. In EU law there are four directives covering major public contracts (utilities, contract, concessions, defence & security). The rules of these directives generally still apply within the EEA, so while there would be minor changes, any impact would be minimal.
- 2) GPA
GPA (Agreement on Government Procurement) has the same requirements as the EU regarding advertising and competition; however the GPA has a narrower scope than EU procurement directives in terms of coverage of entities and contracts, and there is no 'below-threshold'. The transparency rules under the GPA are less stringent than within the EU and there is less regulation regarding qualification systems, framework agreements, and no mandatory electronic procurement requirement.
- 3) EEA-minus
Under an EEA-minus approach, EU acquis continues as the basis of public procurement, retaining the EU's access to above-threshold UK markets, but there is liberalisation from procurement rules. All contracts and entities would be covered.
- 4) GPA-plus
The GPA approach but with supplementary rules to address key issues not covered by the GPA, particularly rules based on the EU acquis.

[Reference: Consequences of Brexit in the area of public procurement, Policy Department A: Economic and Scientific Policy]

What Brexit looks like will depend largely on which approach is taken. Though no one knows for sure, commentators generally feel that GPA or GPA-plus approach is most likely – but time will tell.

The only certainty is there is no certainty

In reality at this point in time, the only certainty we have is that there will be no certainty on what the final Brexit will look like until we get to the final Brexit deal. The organic nature of the process, and the number of interested parties involved, means that there can be no sure answers until it is passed.

Added to this, for UK public procurement specifically, under a GPA approach, public procurement rules would be subject to variance as Governments change and they bring new policies with them. So changes would continue.

How can UK public procurement operate in this environment?

Procurement systems which enable the practical application of these directives need to be able to work with whatever changes come, and whenever these changes come. A procurement system that is able to adapt is a must.

Though we know change is coming, for now we are in a period of calm. No changes will happen until the UK officially withdraws from the EU. This is the time to act. This is the time to ensure your systems can cope with whatever the final deal looks like and the direct implications it brings to procurement.

What are the systems considerations needed to be ready?

While there may be some considerations relating to transactional/P2P solutions, the main impact of Brexit change will be on the contract lifecycle – likely areas to be impacted will include the way in which opportunities are advertised, the nature of procedures and timescales surrounding supplier engagement and the way in which transparency data is published.

This is our list of some must-haves for any procurement system supporting the contract lifecycle to operate successfully in the changing environment:

- Ability for the procurement system to adapt quickly to changes in procedures and processes – in practical terms, this means being able to add new fields, modify existing fields, change validation rules, update workflow or redefine templates without having to go through lengthy and costly change control and approval procedures with the service provider
- Aim for secure cloud-based solutions – they are more agile as they do not require intervention from internal IT procedures when responding to changes
- Look for a system with template driven processes which can be updated immediately by your own staff, i.e. without dependency on your service provider
- Consider the size of your service provider. Are they an agile company? Are they able to be flexible to your changing needs? Does the technical architecture of their solution allow client customisations to be made independently, or do they require a change to the core system and for the entire client base of the service provider to be upgraded together?
- Consider levels of integration especially across eSourcing, pipeline planning, contract management and SRM solutions. Implementing integration changes between service providers can cause unnecessary complexity and delay.

The key is adaptability. There is no clear answer whether public procurement directives will continue largely as they are or if there will be radical change. There is no clear answer when any changes will take place, if those changes will be long lasting, or if they will be subject to ongoing politically-driven amendments.

Ultimately, the answer to success is the adaptability of your system. The question is, are your procurement systems up to the job?