



SCOTTISH  
PROCUREMENT  
ALLIANCE

**Procurement, what do I need to know?**

# Intro to Clive Feeney & SPA...

- Clive Feeney, Director SPA
- Board Member Berwickshire Housing Association
- Involved in building and construction for over 25 years
- 8 years with LHC (.gov not-for-profit)
- Heading up Scottish Procurement Alliance - 2016
  
- SPA established March 2016
- Collaboration between RSL's & Scottish Local Authorities (83)
- Set up and manage pre tendered frameworks
- £100m construction contracts 2017/18

## What is SPA...

## Managed by a board of 13 Founder Partners







Crossroads  
Community Hub



Barrhead Housing Association Limited





- Set up The Procurement Advisory Service
- Procurement advisor
- Scotland wide procurement roadshows
- Over 200 participants
- New tranche of training just announced

## Where did the procurement regulations come from?



The Treaty of Rome 25 March 1957

## A history lesson.....

### ➤ Free movement of:

1. Goods
2. Capital
3. Services
4. People

### ➤ Prohibited trade barriers across EU states

## A history lesson.....

- Directives introduced in 60s largely ineffective:

More Directives!

- Directive 71/305 Public Works Contracts
- Directive 77/62 Public Supply Contracts
- By 1985 – still barriers to free trade across Europe,

so...



## A history lesson.....

### More Acts and Directives!

- Single European Act” 1986 led to current EU law
- Directives in 1988/89 and 92 amended all public directives

Consolidated in 1993 but still didn't break down barriers to trade

## A history lesson.....

- Directive 2004/18 "Public Sector Directive"
  - did set out common rules
  - did replace national regulations
  
- Public Contracts (Scotland) Regulations 2006
  - Now all contained in Public Contracts (Scotland)
  - Regulations 2012

## Progress.....

- **New 2015 Regs are**
  - Less long-winded (reduced timescales)
  - Less complicated (case law and guidance now built in)
  - Possibly less controversial (clearer guidance)
  - Pro-SME (breaking into Lots, turnover cap)
  
- **New 2016 Regs & 2014 Reform Act**
  - Pro-local (social benefits, support businesses, 3<sup>rd</sup> sector)
  - Pro-SME (reduced thresholds in Scotland)

## What is 'Regulated Procurement'?

- EU Regs – OJEU Notice
- Works Contracts to the value of  $\geq$  £4.55m
- Services Contracts to the value of  $\geq$  £181k
- Goods/Supplies Contracts to the value of  $\geq$  £181k
  
- Procurement Reform Act - Scotland Notice
- Works Contracts to the value of  $\geq$  £2m
- Services Contracts to the value of  $\geq$  £50k
- Goods/Supplies Contracts to the value of  $\geq$  £50k

## Notable EU PCS 2015 Regs Changes

### **Mandatory Requirements (no choice from EU)**

- New European Single Procurement Document (ESPD) (reduction in documentation – SME and paper friendly)
- The minimum time limits reduced (faster procurement)
- Pre-market consultation encouraged (SME friendly)
- Contracts into smaller lots or explain why not (SME friendly)
- Contracts must never be awarded on lowest price/cost, they must have some aspect of quality
- Greater collaboration, with benefits of cost and resource efficiencies



## Notable Reform Act Changes

### Optional Requirements (choice exercised by Scotland)

- Below EU thresholds covering public contracts (for goods/ services) above **£50K** and public works in excess of **£2M**, (EU £181k & £4.55m)
- Community Benefits can be required in procurements,
- Excluded contracts are defined – notably acquisition of land and buildings,
- Companies guilty of “blacklisting” mandatorily excluded,
- Must advertise opportunity on Public Contracts Scotland (PCS),
- RSL's must keep a 'Contracts Register' for Regulated procurement,
- All procurement communication to be electronic from Oct 2018.

## Notable Reform Act Changes

### Additional Requirements (specifically Scotland)

- Procurement Strategy for organisations who spend more than £5m per annum, (new guidance “encourages” below £5m too??)
  - prepare a procurement strategy setting out how the authority intends to carry out regulated procurements, or
  - review its procurement strategy for the current financial year and make such revisions to it as you considers appropriate,
  - Must include value for money, transparency, non-discrimination, sustainability, community benefits, consultation, H&S, ethical procurement, prompt payment, living wage etc,
  
- To consider, Community Benefits for all spend more than £4m.

## Public Contracts Scotland (PCS) Quick Quote (QQ)

- Quick Quote (QQ) is an online request for quotation facility for Suppliers who are registered on PCS,
- Low value & low risk procurement only, to be used for Services /Supplies & Works up to £50k, **(Good Governance)**
- Small scale non-repetitive works, i.e. for one-off projects, individual small scale, fire damage etc
- Not repeated works i.e. kitchen year on year 2012, 2013, 2014, 2015, 2016, 2017...,
- Values are cumulative on all procurement, a 5 year kitchen programme at £40k per year is a £200k contract,
- SG watch and monitor this through a reporting tool on PCS.

## In practice the reality of the changes

- RSL spends £15k per year on Stationary products in a 4 year contract = £60k (Goods & Service threshold £50k)
- RSL spends £30k per year on Legal services in a 3 year contract = £90k (Goods & Service threshold £50k)
- RSL spends £800k per year on a Modernisation project over a 3 year contract = £2.4m (Works threshold £2m)
- All the contracts above are now deemed to be “Regulated Procurement” under the Scottish changes in the Reform Act,
- RSL’s need to consider all buying activities – not just Construction related but Stationary, IT, Insurance, Auditing, Legal & Advocacy Services etc.

What if RSL's don't comply?





## What if RSL's don't comply?

- Legal Remedies!
- Can bring proceedings - court determines & can suspend award, but can also consider negative consequences, including public interest,
- Court may:
  - By interim order suspend procurement process/award
  - Set aside award decision & award damages
  - Declare as '**ineffective**' and this will lead to re-tendering
  - Order amendment of any document
  - Award damages

## Are there any benefits???

- Clarity on unclear issues, such as threshold values,
- Framework Agreements and call off contracts under frameworks to provide ease of use and understanding,
- Requirements on Community Benefits and guidance,
- Ability to exclude a tenderer on the basis of past poor performance,
- Lower thresholds
- Pro-SME & Pro-Local,
- Requirement to suitably advertise all contracts

# What next for RSL Governance?

## Board Members....what should you do?

- Ensure Compliance,
- Ensure that your RSL procures in line with the new Regs & Reform Act requirements,
- Ensure revision of current Procurement Policy in line with new Regs & Reform Act requirements,
- Ensure completion of Procurement Strategy & Annual Report in line with the Statutory Guidance,
- Ensure “Consideration” of Community Benefits in line with the Statutory Guidance.
- Ensure all staff are have appropriate training

