

Review

EU, Competition & Trade



Public Procurement - Putting the Accelerated Restricted Procedure into Practice

Recently, the European Commission has acknowledged the importance of speeding up procurement procedures and has agreed to imply a presumption of urgency for all major public projects throughout 2009 and 2010.

Some press releases have referred to the 'new accelerated restricted procedure', in actual fact the law itself has not changed, the Commission has simply sought to facilitate the use of the accelerated restricted procedure in the hope of supporting Member States given the current economic climate.

EU public procurement rules allow contracting authorities to apply relaxed timescales to projects governed by the restricted procedure. Time scales can be reduced from the traditional 87 days (or 80 days if electronic means of communication are used), down to a minimum 30 days where the reduction can be justified on the grounds of urgency.

One size fits all?

Many in the industry have been quick to interpret the Commission's comments as a carte blanche to waive many of the procedural requirements in new projects, or as an easy way out of troublesome procurement projects. In reality, as has always been the case, the accelerated restricted procedure will only be suitable for a small proportion of projects.

Each project should be assessed on a case-by-case basis to establish its suitability for the accelerated restricted procedure.

As a general rule if the traditional restricted procedure would not have been suitable for the project, the accelerated restricted procedure is unlikely to be applicable either. Complex projects requiring negotiations will still need time for discussion and clarification of issues, these projects may be better suited to the competitive dialogue procedure rather than the accelerated restricted procedure.

When can the accelerated restricted procedure be used?

The presumption of urgency applies only to major projects. By their very nature, 'major projects' would, more often than not, require greater scope for negotiations and as such, would be more suited to the competitive dialogue or the negotiated procedures. With this in mind, to many contracting authorities the Commission's comments on the importance of speeding up the execution of major public investment projects through the use of the accelerated restricted procedure will be of little value.

Nevertheless, the accelerated restricted procedure may be useful if, for example:

- a project which started under competitive dialogue has run into difficulty at an advanced stage; and
- there is no need for further negotiations; but
- the contracting authority is still not comfortable signing the contract as it does not reflect market conditions anymore or if there has been a material change which requires a new process to be initiated.

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In such circumstances, the accelerated restricted procedure may be appropriate provided the contracting authority could draft a contract on the knowledge gained.

Obviously, the accelerated restricted procedure would also be suitable for new projects, where the traditional restricted procedure would have been appropriate and where the contracting authority considers the rapid execution of the contract serves the fundamental purpose of boosting the economy.

Even when a project appears to be suitable for the accelerated restricted procedure, you may want to bear in mind:

- just because it is possible to use the accelerated restricted procedure does not mean that it is the most advantageous or beneficial procedure for your project
- reducing timescales means tighter deadlines, this may place added pressure on contracting authorities and suppliers, making it more difficult to prepare for and execute a procurement process and to secure best value for money
- contracting authorities should be confident that they can justify why rapid execution of the contract would be beneficial to industry

Approach with caution

A challenger may try to claim that using the accelerated restricted procedure has put them at a disadvantage. At present, it is uncertain how the courts would deal with this. Given the Commission's apparent support for the accelerated restricted procedure, it is hoped that the courts would give due consideration to this, thereby lessening the burden of proof on contracting authorities.

The safest approach is to treat the Commission's comments with a degree of caution and to only embark upon an accelerated restricted procedure where you are comfortable that this procedure is indeed suitable for your project in terms of both flexibility and timing.



FURTHER INFORMATION

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