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An update on the new Public Contract Regulations 2015

Kristian Smith

Assistant Director Procurement & Compliance

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Agenda

- Scene setting and recap
- The new regulations
 - Why?
- Summary review
- Take away points





Scene setting

- Public Procurement regimes (UNCITRAL, GPA, World Bank & EU Procurement Directives)
 - Aims?
- UK & EU
 - CCT
 - 1991 – 1st regs.
 - 2004 – PCR 2006
 - 2014 – PCR 2015
- Perceptions – expensive, process centred, bureaucratic, increased challenges





The Regulations

- Directive 2014/24 – UK first adopter
- Public Contract Regulations 2015 became live on 26 February 2015 and applies to all procurements commenced after that date
- A process has commenced if any notice is published or any expressions of interest are sought (Reg 117)





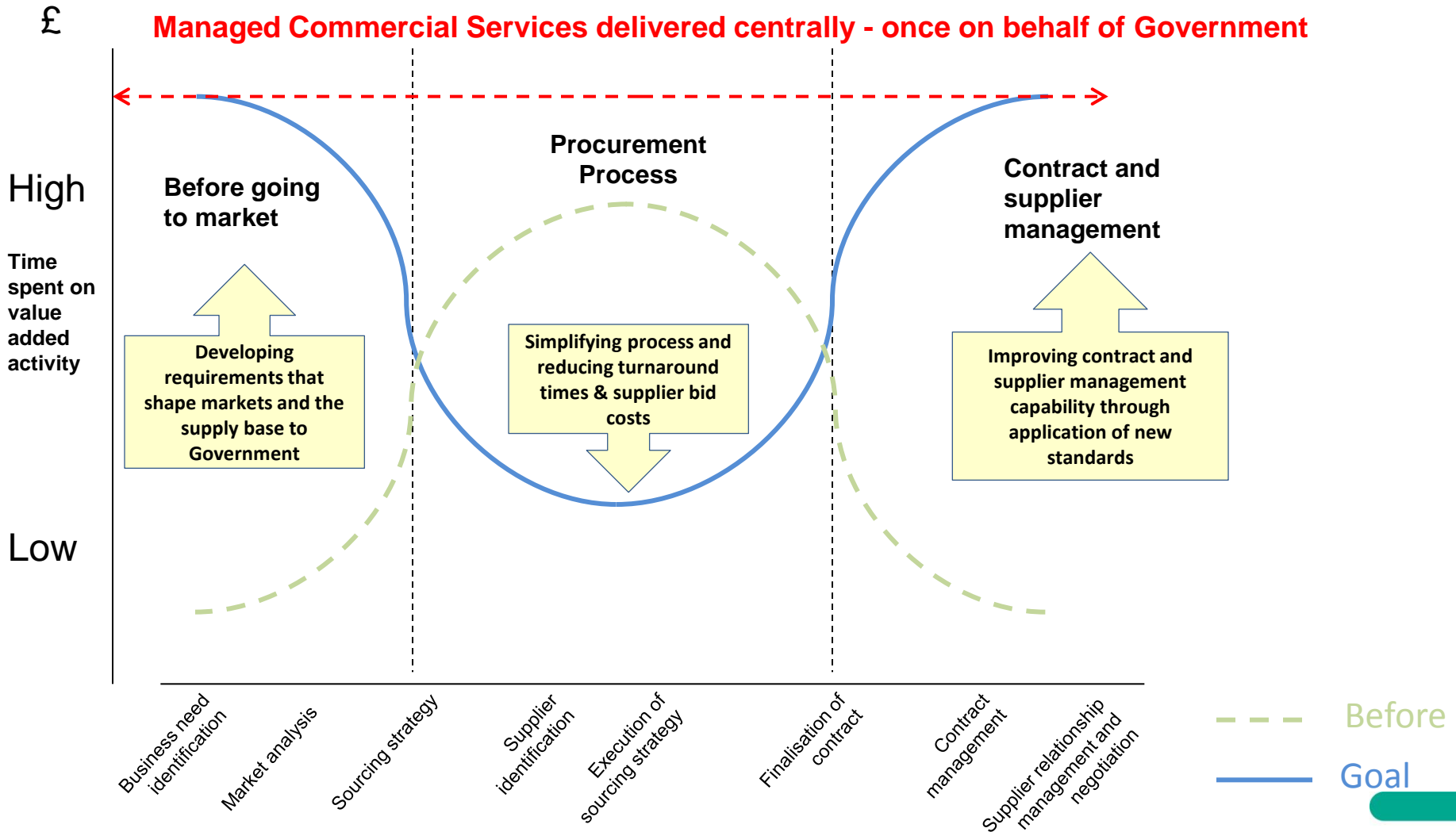
Why?

❖ **Why? – Set out in Recital - Directive 2014/24**

- Increase the efficiency of public spending
- Facilitate in particular the participation of SMEs in public procurement
- Enable procurers to make better use of public procurement in support of common societal goals
- There is also a need to clarify basic notions and concepts to ensure legal certainty and to incorporate certain aspects of related well-established case-law of the Court of Justice of the European Union.



The new DNA for commercial activities: A CCS perspective





Why?

❖ **Incorporating domestic procurement rules into legislation**

- See Lord Young reforms
- Chapter 8 Reg 106
 - >10k central government
 - >25k others (LG)
 - advertise on Contracts Finder
 - No PQQs
 - Publish award details






Summary review

❖ Lots hasn't changed!

- how to calculate values, principles, thresholds, specifications, standstill, ineffectiveness
- Remedies directive 2004
 - **very similar skeleton**


❖ Clarifications more than changes?

- soft market testing,
 - frameworks, award criteria broadening to include social & environmental benefits
 - MEAT in WLC & removes lowest price
 - Teckal
- 



Summary review

❖ Core changes

- Abolishing Part A & Part B services distinction – light tough regime
 - New procedures & timescales generally shortened (innovation partnerships, competitive procedure with negotiation)
 - Conflicts of interests
 - Exclusion for past contract performance
 - DPS updates
 - E-Proc. mandated from 2017
 - Electronic catalogues accepted
 - Division into Lots – justification
 - Good governance record – Reg84 report
 - Teckal rules explained & clarified
 - A single European Procurement document from 2018 to show “preliminary evidence”
 - Sub threshold rules for UK e.g. no PQQ & >25k advertised on contracts finder
 - Rights changing to obligations e.g. abnormally low tenders
 - Documents ready to be available upfront of the Proc. process
 - GPA – MFN clause
- 



Summary review

- **Quicker and less administrative**
 - Shorter timescales, documents available at the start of procurement processes, mandated use of technology, updated DPS
- **More SMT aware**
 - Division into lots, a single European Procurement document, sub threshold procurement rules, electronic catalogues are acceptable
- **Modernised to embrace technology**
 - Mandated use of e-procurement by 2017, e-auctions
- **UK agenda?**
 - Exclusion for past contract performance, horizontal procurement policies, use of Teckal companies – more common, pre-market engagement explicitly permissible





Take away points

- UK Government promoting as modernised, less bureaucratic, e-enabled and recognising issues affecting procurement officers in the UK
- ESPO has delivered training on behalf of the Cabinet Office
- All ESPO Proc. Staff & Member Proc. Officers offered training – some 100+ trained
- PCR procedure updated
- No risk profile change – although as “new” the law will evolve and inherent uncertainty
- Early days...only 1 case law





Thank You

Any Questions?

