

Making MAT Matter

Procurement Lawyers' Association
18 October 2023
5pm – Freshfields London office

- Michael Bowsher KC
 - Barrister: London, Belfast & Dublin
 - King's College London





Making MAT Matter

How will MAT bring new policy areas into bid evaluation;
and how will the implementation of the National Procurement Policy Statement make a
difference to decisions?

(And who's going to be enforcing all this?)

For purposes of this presentation

Legislation is version of Act as amended in Public Bill Committee and published in consolidated
version on 24 Feb 2023

NPPS is National Procurement Policy Statement (June 2021)

Legislative Text

Clause 12 Covered procurement: objectives

- (1) In carrying out a covered procurement, a contracting authority must have regard to the importance of-
 - (a) Delivering value for money;
 - (b) Maximising public benefit;
 - (c) [transparency – or part of]
 - (d) Acting, and being seen act, with integrity.
- (2) & (3) [Equal Treatment]
- (4) [SMEs]

Legislative Text

Clause 19

- (1) A contracting authority may award a public contract to the supplier that submits the most advantageous tender in a competitive tendering procedure.
- (2) The “most advantageous tender” is the tender that the contracting authority considers-
 - (a) Satisfies the contracting authority’s requirements, and
 - (b) Best satisfies the award criteria when assessed by reference to –
 - (i) The assessment methodology under section 23(3)(a) and
 - (ii) If there is more than one criterion, the relative importance of the criteria under section 23(3)(b)

...

Legislative Text

Clause 23 Award Criteria

- (1) In this Act, “award criteria” means criteria set in accordance with this section against which tenders may be assessed for the purpose of awarding a contract under section 19.
- (2) In setting award criteria, a contracting authority must be satisfied that they—
 - (a) relate to the subject-matter of the contract,
 - (b) are sufficiently clear, measurable and specific,
 - (c) do not break the rules on technical specifications in section 56, and
 - (d) are a proportionate means of assessing tenders, having regard to the nature, complexity and cost of the contract.
- (3) In setting award criteria, a contracting authority must—
 - (a) describe how tenders are to be assessed by reference to them and, in particular, specify whether failure to meet one or more criteria would disqualify a tender (the “assessment methodology”), and
 - (b) if there is more than one criterion, indicate their relative importance by—
 - (i) weighting each as representing a percentage of total importance,
 - (ii) ranking them in order of importance, or
 - (iii) describing it in another way.



National Procurement Policy Statement (see clause 13)

Para 11 et seq

In...evaluating tenders they can and should take a broad view of value for money that includes the improvement of social welfare or wellbeing.

Para 12

This includes incorporating award criteria for comparing final bids and scoring their relative quality, to encourage ways of working and operational delivery that achieve social, economic and environmental benefits.

Some Questions

1. What will be treated as lawful or sensible criteria – does the law change? (Max Havelaar still good law?)
2. How does “related to subject matter” relate to performance?
2. Is the law on assessment fit for purpose? Is it law from an older time?
3. How will these “soft” factors be assessed and scored?
4. Can or should the power of the BidWriter or AI to meet the criteria be addressed?
5. What if assessment is wrong?
6. Can these factors be contractualised so as to provide some discipline?
7. Who is going to police the content of these factors? JR from NGOs challenging content, or bids?
8. And as for scoring?

See also <https://mostlyprocurement.typepad.com/>



Michael Bowsher
Barrister, Visiting Professor, Arbitrator



mbowsher@monckton.com