

EU Procurement Regulations Update

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Hellios Information?

- ◆ A supplier information and risk management company operating supplier pre-qualification, qualification and accreditation services for industry communities and multi-national companies
- ◆ Hellios Information's EU team advises buyers on best practice in awarding contracts covered by the EU procurement legislation
- ◆ The team offers bespoke training services, EU advice support contracts and EU consultancy.

Procurement law has changed

- ◆ New regulations in force implementing the public contracts directive 2014/24/EU
- ◆ The regulations also include new legal requirements both above and below the EU thresholds (the Lord Young reforms)
- ◆ A key aim of the changes is to improve transparency of contract opportunities and facilitate access by SMEs to contracts for works, supplies and services

What has not changed?

- ◆ The regulations continue to provide a transparent process aimed at maximising opportunity for suppliers whilst allowing achievement of value for money by public bodies - ‘contracting authorities’
 - ◆ Advertising in the EU journal (and also now in Contract Finder) and allowing adequate time to respond
 - ◆ Objective and transparent rules for setting specifications and selecting suppliers to tender
 - ◆ Clarity on the criteria used to decide the best tender
 - ◆ Disclosure of reasons for failure to win contracts and legal remedies for suppliers

What has not changed?

- ◆ The regulations regulate the way in which authorities award both high and low value contracts – the rules for high value contracts are more complex and demanding on authorities
- ◆ High value means over £4.3m for works contracts and £173,000 for goods and services contracts (or £112, 000 for central government)
- ◆ As now authorities must comply with principles of transparency, non- discrimination, equal treatment and proportionality
- ◆ Suppliers have access to legal remedies

Key areas of change in the Public Contracts Regulations

- ◆ A new 'light touch' regime' for certain services (mainly health and social care' services)
- ◆ Greater and earlier transparency of information on contract opportunities
- ◆ More scope for negotiated procurement with competition
- ◆ Shorter minimum timescales for response to adverts
- ◆ Enhanced role for e-procurement including improvements to the 'dynamic purchasing system'

Key areas of change in the Public Contracts Regulations

- ◆ Assistance to suppliers especially SMEs (including limitations on pre-qualification)
- ◆ Greater clarity on use of social, ethical and environmental issues in procurement
- ◆ New 'national provisions', including increased regulation of lower value contracts, use of Contracts Finder

Assistance to suppliers, especially SMEs

- ◆ Encouragement of early disclosure of intended procurements using PIN notices and pre-market engagement (e.g. supplier workshops)
- ◆ Requirement to consider 'lotting' contracts
- ◆ Limitations on the use of turnover as a measure of financial capacity

Assistance to suppliers, especially SMEs

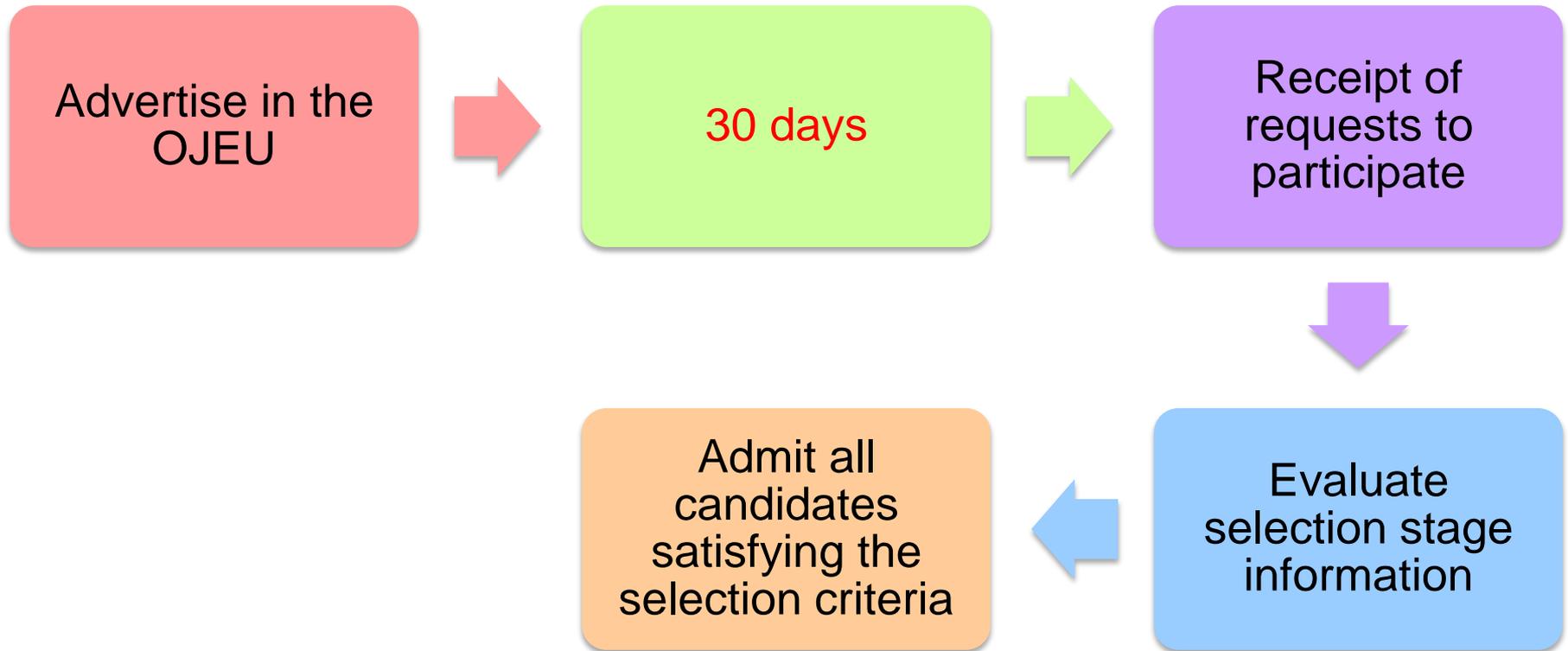
- ◆ Improved standardisation of pre-qualification
 - ◆ (standard PQQs,
 - ◆ the proposed 'Single European Procurement Document'
 - ◆ moves towards an EU-wide database of certification - eCertis)
- ◆ Increased self-certification - proofs of capability normally to be sought from winning supplier only

Electronic procurement

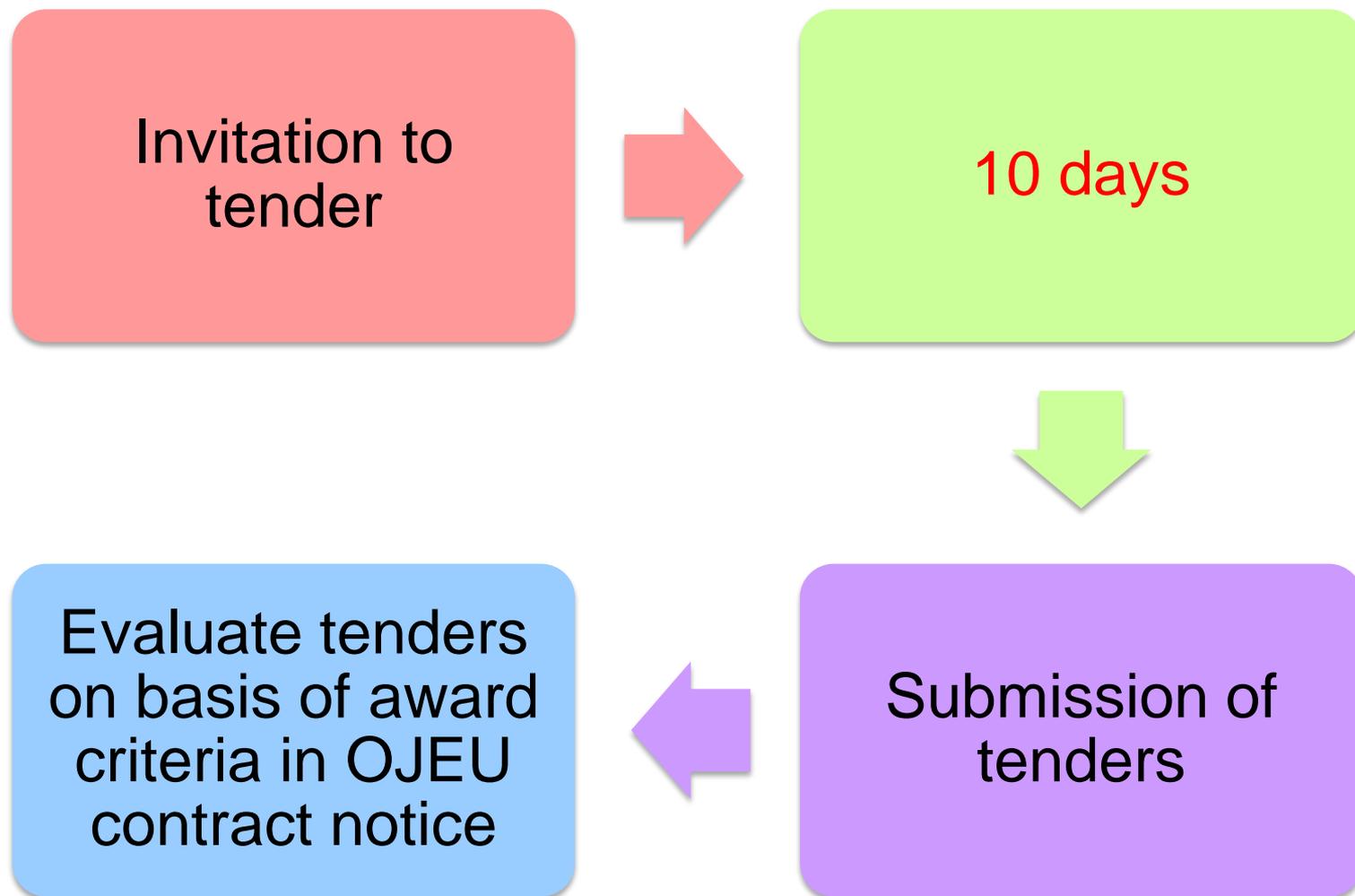
- ◆ Authorities must submit OJEU notices electronically and make procurement documents available electronically
 - ◆ Except in certain cases e.g. scale models, confidential information
- ◆ Authorities encouraged to allow electronic tenders (will be mandatory by April 2018)
- ◆ A substantially reformed 'electronic framework agreement' – the Dynamic Purchasing System...

- ◆ For commonly used purchases generally available on the market
- ◆ Completely electronic process
- ◆ An “open” system – suppliers can apply to join the DPS at any time
- ◆ Cannot charge suppliers to apply for or participate in a DPS

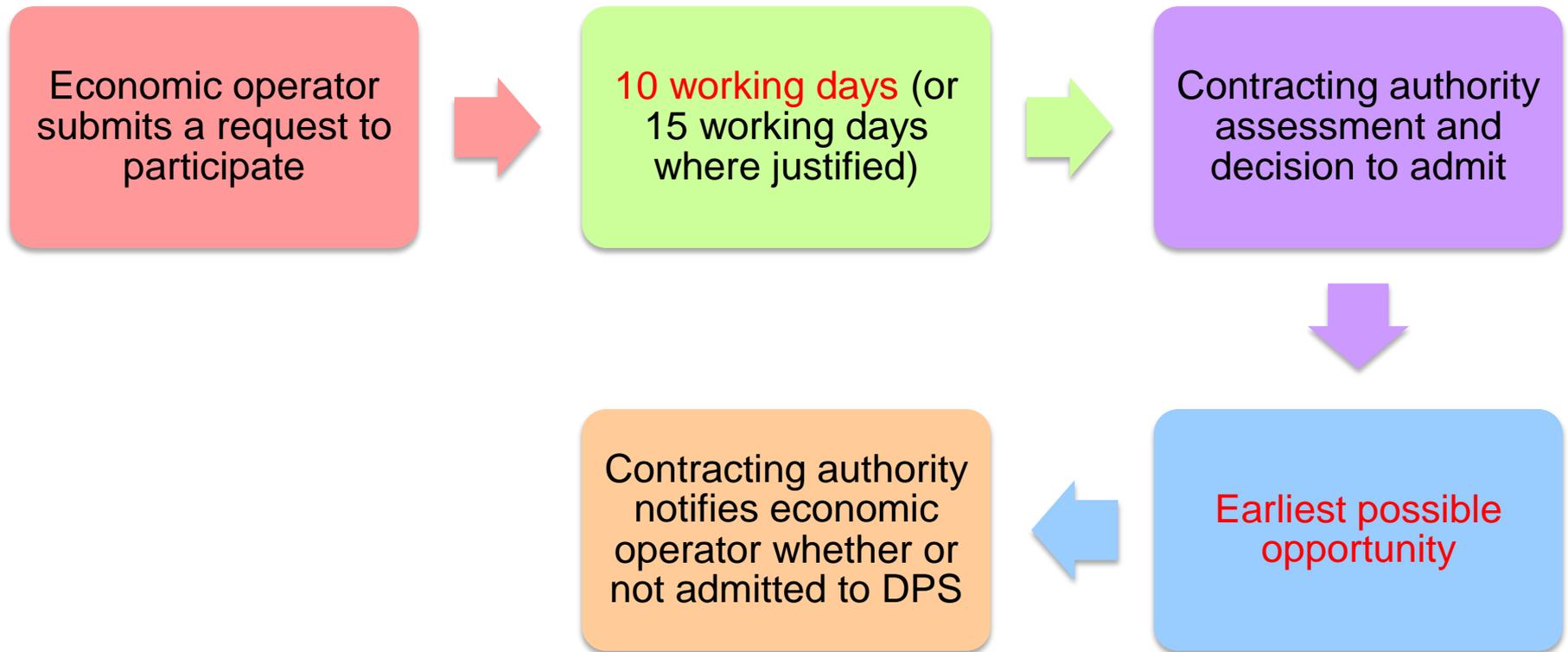
Establishing a DPS “restricted procedure”



Awarding contracts under a DPS



Application to participate in an established DPS



Procurement documents Regulation 53

- ◆ Procurement documents must be available *from the date of publication of the OJEU contract notice/invitation to confirm interest [where PIN used as call for competition]*
- ◆ Free of charge
- ◆ Unrestricted and full direct access on the internet
- ◆ Very limited exceptions to this general rule

“Procurement documents” are widely defined

Regulation 2

- ◆ Any document produced or referred to by the contracting authority to describe or determine elements of the procurement or procedure, including:

PIN and contract notice

Technical specifications

Descriptive document

Conditions of contract

Format for presentation of documents

Information on any generally applicable obligations

Any additional documents

Exclusion of candidates

- ◆ As part of pre-qualification authorities usually ask a number of questions about suppliers' 'status' including
 - ◆ Convictions for fraud, corruption, money laundering
 - ◆ Other business related convictions
 - ◆ Failure to pay tax
 - ◆ Bankruptcy
- ◆ These can lead to mandatory or discretionary exclusion from the award of a contract
- ◆ The new regulations include additional 'exclusion reasons'

Exclusion of candidates

- ◆ Addition to mandatory reasons of convictions for terrorist offences and for non-payment of taxes (binding legal decision)
- ◆ Some additional discretionary exclusions including
 - ◆ Where 'significant or persistent' deficiencies in contract performance that led to early termination or similar sanction
 - ◆ Where Authority can demonstrate non-payment of taxes in absence of binding legal decision
 - ◆ Where sufficiently plausible indications to conclude that the economic operator has entered into agreements with other economic operators aimed at distorting competition

Exclusion of candidates Regulation 57

- ◆ Self cleaning mechanism

- ◆ Exclusion not permitted where sufficient evidence of reform (payment of compensation, changes in organisation)

- ◆ Periods of exclusion

- ◆ Whether or not evidence of reform maximum period of 5 years (mandatory), 3 years (discretionary)

Contact details

- ◆ Thank you
- ◆ A copy of this presentation is available from gail.wilson@hellios.com.
- ◆ If you have any questions on these issues, please email Gail or contact her on 07921 560478

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