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Making the EU Procurement Rules Work for Your Major Project

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Law Society
CPD hours

Topics for discussion include:

- **Government objectives, time-scales and enforcement procedures**
- **Using elbow room to your advantage and twisting the rules to your way of thinking**
- **Flashpoints when using competitive dialogue**
- **Cutting out advertising and reducing your procurement compliance burden**
- **Choosing and excluding tenderers**
- **Strategic use of environmental & social optouts**
- **Reconstructing a compliant tendering process**
- **Risks and realities of being caught out as non-compliant**

Peter Bennett

Head of EU Development, Office of Government Commerce

Michael Dean

Partner, Maclay, Murray & Spens
Head of EU, Competition Law and Regulatory Department

John Scriven

Counsel, Allen & Overy
Joint Head of Construction Group and editor and co-author 'A Contractual Guide to Major Construction Projects'

Michael Bowsher

Barrister, Monckton Chambers
Is 'Unequivocally recognised as a huge star in the field of EU Public Procurement' - Chambers and Partners

Jonathan Davey

Partner, Addleshaw Goddard
Head, Competition, Trade and Regulation Group

Susie Smith

Partner, Bevan Brittan
Procurement advisor in virtually all the firms PFI/PPP projects

Paul Lasok QC

Barrister, Monckton Chambers
Is 'imbued with encyclopaedic knowledge of EU and Competition Law' - Chambers and Partners

Jennifer Skilbeck

Barrister, Monckton Chambers
Is 'A recognised procurement expert' - Chambers and Partners

Tuesday 25 April 2006

The Carlton Tower, London SW1

0930**Registration and coffee****1000****Chair's introduction:****Government objectives, time-scales and enforcement procedures**

- In 2002, total EU procurement market worth £1,000 billion, 16% of GDP
- UK implementing regulations came into effect on 31 January 2006
- OGC guidance on key aspects
- Competitive dialogue for complex projects
- Framework agreements operational
- Effective monitoring procedures
- Greater competition and access to overseas markets for UK Companies?

Peter Bennett

Head of EU Development, Office of Government Commerce

1035**Using elbow room to your advantage and twisting the rules to your way of thinking**

- Rules not a problem, but the application is?
- Flexible interpretation can lead to barriers
- Deficiencies in single market and cultural differences across member states
- Take up and examples of misapplication from across Europe
- Short-term benefits for your project more attractive than benefits for single market?
- Will the market adapt in a way the rules' drafters did not expect?

Michael Dean

Partner, Maclay Murray & Spens and Head of EU, Competition Law and Regulatory Department

1110**Morning coffee****1125****Critical factors when using competitive dialogue in major project procurement**

- A framework for sound commercial practice and maximum flexibility
- Anti-competitive effects of framework agreements: should you go ahead?
- If competitive dialogue does not lead to a contract award - can you switch the negotiated procedure?
- Flexibility in competitive dialogue for negotiation?

- Negotiating on the basis of an evolving technical specification?
- Do commercial realities preclude fairness?

John Scriven

Counsel, Allen & Overy and Joint Head, Construction Group

1200**Cutting out advertising and reducing your procurement compliance burden**

- Obligations to advertise after TelAustria: and enforcement
- Consequences of advertising even though the Regulations do not apply?
- What are you looking for as an outcome?
- When to make a Direct Award (without any regulated procurement)?
- What if there is only one person to deal with: the rules and reality
- Testing the avoidance plan

Michael Bowsher

Barrister, Monckton Chambers

1235**What if...? scenarios**

Leading procurement experts Michael Bowsher and Jennifer Skilbeck will put 10 tricky procurement scenarios to the panel and take questions from the floor

1300**Lunch****1400****Choosing and excluding tenderers at your election**

- Modelling evaluation outcomes
- Selecting your shortlist with the help of entry criteria
- No real help in the new regulations on inclusion/exclusion
- Altering your weighting in line with a changing specification
- Appropriateness/lawfulness of non-linear weightings
- Pass/fail and interaction with variants
- Testing obligation to be transparent
- Ambiguity of price/quality relationship
- How much discretion remains to those evaluating?
- Who should evaluate: collegiate versus individual scoring

Jonathan Davey

Partner, Addleshaw Goddard and Head, Competition, Trade & Regulation Group

1435**Using environmental and social criteria to get the result you want**

- How far can you go when taking these factors into account: scoping, selection, evaluation and operation?
- Working within the margins of the guidance - national and European
- Current practice and aspirations

Susie Smith

Partner, Bevan Brittan

1510**Afternoon tea****1525****Reconstructing a compliant tendering process after the event**

- Complex projects involve change
- Incremental changes can add up to a radically altered specification
- Tender review reveals a better way forward
- Transfer of interests can alter the provisions of the contract
- You're so far down the line, you can't contemplate collapse
- Steps to rescue the package

Paul Lasock QC

Barrister and Head of Chambers, Monckton Chambers

1600**Risks and realities of you being caught out as non-compliant and in breach of proprietary information**

- Confidentiality of tender information
- Scope to inform winning bid with competitors' ideas
- Capacity of unsuccessful bidders to challenge the process and cause contract collapse
- Invoking EU and domestic enforcement procedures and watch dogs
- Mood of the courts and litigation trends including Holleran

Jennifer Skilbeck

Barrister, Monckton Chambers

1635**Continuation of What if...? scenarios and questions and discussion****1700****Close of conference**

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