



“Hot topics” in procurement

by Barry Hembling

Introduction

- 1 Over the last year, the education sector has been at the forefront of developments in procurement law. During this time, we have seen an increasing number of cases challenging breaches of the procurement rules. A growing number of those challenges have been successful.
- 2 The purpose of this paper is to consider the latest hot topics in procurement with reference to the case law. Over the last year, the courts have provided some helpful and insightful clarification on procurement law issues. Recent rulings have made clear:
 - 2.1 When the procurement rules apply;
 - 2.2 Who can bring a claim for a breach of the procurement rules; and
 - 2.3 What remedies are available for a breach of the procurement rules.These are some of the issues that will be considered further below.
- 3 There have been a number of procurement cases over the last year but by far the most interesting cases have related to the construction of education establishments. Accordingly, all cases referred to in this paper are education procurement cases.

Hot Topic 1: The changing face of public procurement in the UK

- 4 A review of hot topics in procurement must start with consideration of the changing face of procurement law itself. Public procurement is the purchase of goods, works or services by government and other public bodies. In order to ensure the free movement of goods and services, the EU issued a series of public procurement directives to provide that:
 - 4.1 Contracts are awarded fairly and without discrimination on the grounds of nationality;
 - 4.2 All potential bidders are treated equally;
 - 4.3 Suppliers of goods and services have the right to take action against public bodies if contracts are not advertised or awarded on an open and fair basis.
- 5 *Directive 2004/18/EC* concerns contracts awarded by central government, local authorities and other public sector bodies (such as schools and universities). The EU directives have been implanted into UK law by various regulations. The regulations applicable to the education sector (among other sectors) are the Public Contracts Regulations 2006¹ (“the Regulations”).
- 6 The Regulations apply to any public body that is a contracting authority. Contracting authorities include:
 - 6.1 Public bodies (such as central government departments and local authorities) listed in the Regulations;
 - 6.2 Other bodies that fall within a general definition set out in the Regulations.

1. Statutory instrument No. 5 of 2006



- 7 The Regulations apply to contracts that are subject to the full procurement regime and which include:
 - 7.1 Contracts for the supply of goods (public supply contracts);
 - 7.2 Contracts for carrying out works (public work contracts);
 - 7.3 Contracts for services (public service contracts) that are listed as "Part A" in the Regulations;
 - 7.4 Specific types of contract defined by the Regulations, for example framework agreements.

- 8 The Regulations only apply to contracts that are:
 - 8.1 In writing; and
 - 8.2 For consideration (whatever the nature of the consideration).

The above wording in brackets is important because it means that even in situations where the English courts have decided that no contract exists under English contract law, the arrangement may still be covered by the rules set out in the Regulations. For example, if no monetary consideration is provided for services (that is, where services are being provided free of charge) but some other benefit is being conferred on the provider, such as a higher tariff being charged on another contract, there may be a contract under the Regulations.

- 9 Having established that there is a contract for consideration for works, services or supplies, it is then necessary to determine whether any relevant exclusions apply. The Regulations do not apply if a proposed contract is:
 - 9.1 An in-house arrangement where specified conditions are met;
 - 9.2 Falls within one of the specific exclusions listed in the Regulations; or
 - 9.3 The contract has an estimated value (net of VAT) that is equal to or exceeds the relevant threshold. The applicable thresholds are amended every two years. They will next be reviewed in January 2010. The current thresholds (applicable from 1 January 2008) are as follows:

	Suppliers	Services	Works
Central Government	£90,319	Part A – £90,319 Part B - (and certain other services ²) - £139,893)	£3,497,313.00
Other public sector contracting authorities (including local authorities)	£139,893	£139,893	£3,497,313.00

2. The following services have a threshold of £139,893: Part B (residual) services, research and development services, television and radio broadcast services, interconnection services, integrated telecommunication services and subsidised services contracts.

- 10 The estimated value of a public contract is the value of the total consideration payable, net of VAT. Details of any extras, such as options and renewals, must also be taken into account in estimating the value of a public contract. Where there



is no fixed price, then the estimated value is determined by either estimating the total value of consideration the contracting authority expects to pay (in the case of contracts of 48 months or less), or by estimating the consideration the contracting authority expects to pay each month and multiplying that by 48 (in the case of contracts of 48 months or more).

- 11 The aggregation rules require that in certain circumstances the value of purchases under individual contracts must be added together. This could then result in the thresholds set above being met. The Regulations will apply if the combined value is equal to or exceeds the relevant threshold. This is an anti-avoidance measure which deters contracting authorities from deliberately dividing up contracts to bring them below the relevant threshold. This means that where there is one contract in relation to a single piece of work (for example, if a university hall of residence lets separate contracts for different building phases), the estimated value of all the contracts must be aggregated to determine whether the threshold is reached. If the threshold is reached then each of the works contracts will be covered by the Regulations.
- 12 Certain contracts are subject to less onerous procedural requirements. The Regulations divide services into categories, namely "Part A" services and "Part B" services. Part B services are considered low priority because they relate to areas which are recognised as being services that are national or local in scope. They are not, therefore, considered to be so essential for intra-EU competition that contracts relating to these be advertised on an EU basis. Where the contract is for a combination of Part A and Part B services then the contract will be deemed for the category of services that will account for the majority of the consideration.
- 13 Education is classified as a "Part B" service. This means that only limited procurement rules apply to the education sector.
- 14 The education sector is only subject to some of the detailed rules in the Regulations (for example, rules relating to technical specifications and contract award notices). Importantly, prior advertising of contracts for Part B services in the *Official Journal of the European Union* ("OJEU") is not required by the Regulations. A prescribed competitive tender process is also not required.
- 15 Although the education sector is not subject to the full procurement regime, it will still be necessary to comply with the EC Treaty³ principles and, in particular, the principles of:
 - 15.1 Freedom of movement of goods;
 - 15.2 Freedom of establishment; and
 - 15.3 Freedom to provide services;and the principles deriving from these, such as the principles of:
 - 15.4 Equal treatment;
 - 15.5 Non-discrimination;
 - 15.6 Mutual recognition;
 - 15.7 Proportionality; and
 - 15.8 Transparency.
- 16 Certain parts of the regime still apply to the procurement of Part B services. This means that:

3. This is a reference to the treaty establishing the European community. Formally known as the European Economic Treaty, this treaty was renamed in 1993 with the coming into force of the Maastricht Treaty.



- 16.1 Contracting authorities must act in a transparent way and treat all potential providers equally and in a non-discriminatory way;
 - 16.2 Contracting authorities must comply with the detailed requirements relating to technical specifications set out in the Regulations;
 - 16.3 A Contract Award Notice must be published in the *Official Journal of the European Union* ("OJEU") no later than 48 days after a contract award;
 - 16.4 Details of the procurement of Part B services need to be included in any reports that contracting authorities must submit to the Office of Government Commerce; and
 - 16.5 A right to take court action for financial loss against a contracting authority is available to third parties if there is any failure to comply with the requirements of the Regulations or the EC Treaty.
- 17 In practice, contracting authorities must:
- 17.1 Apply selection criteria to choose suppliers to tender;
 - 17.2 Apply certain award criteria to assess tenders; and
 - 17.3 Disclose details of these criteria to the tenderer.
- 18 After a contracting authority has made its decision to award a contract, it must send out a notice, known as an Alcatel Letter, to everyone involved in the tender process. That notice serves to confirm the successful tenderer and its valuation scores. The contracting authority must then allow a standstill of at least 10 days between the notice being sent out and the contract being entered into. During this period unsuccessful suppliers can request a debrief and if they consider that there has been a breach of the procurement regime then they may challenge the contracting authority's decision in court.
- 19 Compliance with the public procurement rules is a duty owed by contracting authorities to suppliers from member states. The supplier harmed as a result of a breach may bring proceedings under the Regulations so long as it has (i) informed the contracting authority of the breach of duty, and (ii) confirmed its intention to bring proceedings, within three months of the breach.
- 20 If proceedings are brought, the court can take interim measures to suspend an award procedure. If the court is satisfied that there has been a breach of the Regulations, it can either order a procurement decision to be set aside or award damages for the loss of opportunity. Currently, the courts cannot order any remedy other than an award of damages if the contract has already been entered into. However, following the implementation of the new Remedies Directive⁴ (which must be implemented in the UK by 20 December 2009), the courts will be able to declare contracts that do not comply with the Regulations ineffective. The European Commission can also take action against the Government for any breach of the procurement regime by a contracting authority in the UK.
- 21 Having considered the background to public procurement in the UK as it relates to the education sector, this paper will now proceed to consider some recent procurement law cases with an education focus.

Hot Topic 2: The extent to which the procurement rules apply

Chandler v London Borough of Camden

- 22 The first case to be considered is *Chandler v London Borough of Camden* and *Chandler v The Secretary of State for Children, Schools and Families*⁵ in which the High Court

4. Directive 2007/66/EC (amending Directive 89/665/EEC and 92/13/EEC)

5. [2009] EWHC 219 (Admin)



handed down judgment on 13 December 2008. The judgment in that case arose out of judicial review proceedings brought against both the Secretary of State for Children, Schools and Families (“the Secretary of State”) and the London Borough of Camden (“Camden”) in respect of a decision to establish an academy sponsored by University College London (“UCL”). The High Court dismissed a claim which suggested that the Secretary of State had made a decision in breach of the public procurement rules. The High Court also refused permission for judicial review on numerous other grounds.

- 23 This case is important because it assists in clarifying the extent to which the procurement rules apply. The High Court ruled in this case that an agreement to establish (rather than construct or maintain) a school fell outside the procurement rules.
- 24 The facts of the case are as follows. Ms Chandler sought permission to apply for judicial review of (i) a decision by Camden not to hold an open competition to decide what type of secondary school to build, and (ii) a decision of the Secretary of State to approve an expression of interest by UCL to build an academy.
- 25 Camden published proposals for a new school and indicated that discussions had taken place with a view to UCL sponsoring an academy. Camden then carried out a public consultation in which parents were asked what sort of school they would prefer. After the consultation had commenced, UCL confirmed its intention to sponsor an academy. The Church of England also submitted an expression of interest in developing a school. Camden indicated that UCL’s proposal was the preferred option and then carried out a further consultation. Camden reviewed the different options, considered the results of the consultations and decided to approve the academy route with UCL as preferred sponsor. UCL then submitted an expression of interest which the Secretary of State approved.
- 26 Ms Chandler was a parent with school-age children in the area and she sought to challenge the decision. In relation to Camden’s decision, Ms Chandler argued that Camden had failed to exercise its discretion to hold a competition inviting proposals for the establishment of the school under the Education and Inspections Act 2006, section 7. In relation to the Secretary of State’s decision, Ms Chandler argued that in exercising his power to approve UCL’s expression of interest, the Secretary of State had been required to comply with the procurement regime and the Public Contracts Regulations 2006 whereby contracting authorities should treat economic operators equally and non-discriminatorily and act in transparent way.
- 27 The High Court held that the application for judicial review based on the failure to comply with the public procurement regime failed. Permission to apply for a judicial review on all other grounds was also refused.
- 28 Concentrating on the public procurement aspects of the judgment, the court held that the procurement rules are primarily a Common Market measure aimed at promoting cross-border trade and competition. The principles of free movement of goods and services underpin the procurement regime. The Regulations were not intended to regulate the process whereby a member state establishes a state school (such as an academy) as part of the state’s function of providing education.
- 29 The High Court went on to say that this case did not involve selecting a contractor to build the school or to maintain and clean it. The issue before the court was the process of setting up the entity that would govern the school as part of the state education system. The process of setting up a state school is not a matter concerned with markets or the free movement of goods and services, and it would be artificial to “shoehorn” such a process with the public procurement regime.



- 30 The establishment of a state school was one of the essential functions of the state. That process is not of an economic nature and so falls outside of the public procurement and competition rules.
- 31 The court went on to observe that it was doubtful whether UCL would receive any pecuniary interest in establishing the school. Its role would be that of a public benefactor and it would be unlikely to obtain any measurable economic benefit to its core activities of providing higher education. Sponsoring an academy would not constitute an economic operator making an offering on the market. Although academies are independent in terms of government structures, they are tied to the state by public funding. They are not fee-paying schools. Academies do not compete economically with fee-paying schools which form a distinct economic sector. Although parents have a choice between private and state schools, state schools are not businesses and do not compete on the market.
- 32 The High Court said that even if there was competition between private schools and academies, then this would not be relevant as the issue before the court was only the establishment of the school and not its activities. Furthermore, the activity of acting as a sponsor of an academy does not involve an economic activity, regardless of whether the sponsor performs commercial activities in its other activities.
- 33 The court dismissed the suggestion that this case involves a relevant market for the provision of educational services in competition with other suppliers. Indeed, the court said that there is no realistic market for the setting up of academies. The concept of a market is very difficult to apply to what are essentially philanthropic actions. The fact that there may be two or more bodies who might be interested in a philanthropic venture does not, of itself, create a market for the establishment of an academy.
- 34 The court therefore concluded that neither of the fundamental concepts of “market” and “economic operator” (which underpin the EC and UK public procurement rules) were satisfied in this case. Therefore, the academy sponsorship process fell outside the procurement rules and the rules had not therefore been breached.
- 35 This case is of interest because it confirms that there is a crucial difference between arrangements for the establishment of a school and arrangements to build a school and perform other functions relating to its activities (such as cleaning and catering). The public procurement rules only apply in the latter case. An agreement to establish a school falls outside the scope of the public procurement rules.

Hot Topic 3: Who can bring a claim for a breach of the procurement rules?

R (in the application of Jillian Chandler (Appellant)) v Secretary of State for Children, Schools and Families (Respondent)

- 36 The Claimant in the *Chandler* case referred to above appealed the judgment at first instance. The matter went to the Court of Appeal and judgment in the appeal case⁶ was handed down on 9 October 2009. In that judgment, the Court of Appeal dismissed the appeal from a ruling of the High Court that found that decisions to establish a sponsored academy school did not fall within the public procurement rules. The Court of Appeal upheld the High Court decision that the agreement between the Secretary of State and UCL for the establishment of the academy fell outside the procurement rules.
- 37 The Court of Appeal confirmed the High Court’s view that the arrangement in this case was not an agreement with an economic operator relating to activities on any market. UCL was acting in a philanthropic and not an economic manner in agreeing to sponsor the new school. The Court of Appeal commented that except where there is some international agency in the field, it is generally unlikely that

6. *R (in the application of Jillian Chandler (Appellant)) v Secretary of State for Children, Schools and Families (Respondent) & (1) University College London (2) Camden London Borough Council (Interested Parties)* [2009] EWCA Civ 1011



arrangements for the provision of services for nil consideration on terms for the reimbursement of costs only, will be of cross-border interest. The Court of Appeal stated that only where there is a sufficient prospect of cross-border interest will the arrangements be subjected to the public procurement regime, competitive tendering and/or an advertising process.

- 38 The judgment of the Court of Appeal is of particular interest in relation to what it says about who has standing to bring a claim for a breach of the public procurement rules. The Court of Appeal judgment confirms that it is not just bidders or potential bidders that can bring a challenge.
- 39 The High Court at first instance had held that Ms Chandler had insufficient standing to bring a challenge to the procurement rules. The fact that Ms Chandler lived in the area and was the parent of school-age children was not enough to entitle her to bring a challenge.
- 40 The Court of Appeal disagreed with the narrow approach taken by the High Court as to the issue of standing. The Court of Appeal said that failure to comply with the Regulations was an unlawful act. An individual who had a sufficient interest in compliance with the public procurement regime in the sense of being affected in an identifiable way, but who was not himself an economic operator, could bring judicial review proceedings to prevent compliance with the Regulations or the obligations derived from the EC Treaty, especially before any infringement took place. Further, once permission to bring such proceedings had been given, then unless it was appropriate to deal with standing as a preliminary issue, there was little point in spending valuable court time and incurring costs on the issue of standing.
- 41 Notwithstanding these comments, the Court of Appeal observed that Ms Chandler was only challenging the Secretary of State's decision because she was opposed to the institution of academy schools and was seeking to use the public procurement regime for a purpose for which it was not created. Although the issue of standing was in fact wider than what was stated by the High Court, in this case because Ms Chandler was seeking to use the rules for another purpose, it was outside the proper function of public law remedies to give Ms Chandler standing to pursue her claim.
- 42 This judgment is important as it widens the basis of those who may seek judicial review challenges to public procurement decisions. Failure to comply with the Regulations was an unlawful act and anyone with a sufficient interest in compliance and who could demonstrate being affected in an identifiable way could potentially bring a claim. The court made clear that it did not want costs and time being incurred on the issue of standing. What the court was more concerned with was the merits of the challenge for an alleged breach of the rules. However, while the judgment does give some guidance as to the situations when an individual might have a sufficient interest to have standing to challenge a procurement decision, the judgment appears to raise the prospect of potential uncertainty for contracting authorities about the risks of litigation by parties other than bidders or potential bidders.

Hot Topic 4: Take care with the evaluation criteria

Henry Brothers (Nagherafelt) & Others v Department of Education for Northern Ireland

- 43 A recent case in Northern Ireland has highlighted that care needs to be taken with the evaluation criteria for selecting successful bidders. The High Court of Justice in Northern Ireland has ruled that the Department of Education for Northern Ireland breached the Public Contract Regulations 2006 in the award of a framework agreement. The case was *Henry Brothers (Nagherafelt) & Others v Department of Education for Northern Ireland* [2008].⁷

7. [2008] NIQB 105



- 44 The court held that the contracting authority had erred in the approach it took to considering costs for the purposes of assessing the “most economically advantageous” bid. In selecting parties to the framework agreement, the contracting authority had only asked for information on fee percentages applied to hypothetical contract values rather than for seeking details of actual costs or prices. The court found that this approach was based on the erroneous assumption that contract costs would be consistent. Furthermore, the problem was compounded by the fact that prices and costs were not determined competitively during the award of specific contracts under the framework agreement. This meant that bidders had not been treated equally. This case demonstrates the care that needs to be taken in the design of the procurement processes and the limits of the discretion on contracting authorities in determining award criteria.
- 45 Henry Brothers brought proceedings against the Department under the Public Contract Regulations 2006, Regulation 30(2), following Henry Brothers’ unsuccessful bid to participate in the Department’s framework agreement. The Department proposed to select eight contractors for its framework agreement relating to construction contracts for the modernisation of schools. Tender documents, including pre-qualification questionnaires, were issued to a number of contractors, including Henry Brothers. When the questionnaires were returned, 12 candidates were invited to tender. An accompanying note explained that the commercial section of the evaluation, as opposed to the qualitative section, would be based on a submission of direct fee percentages. After the tendering process was completed, it was envisaged that a secondary process would take place whereby contractors would be asked to tender for a specific contract. That would involve the provision of a project brief, and a budget, upon which each contractor would be invited to comment. The submissions of the tendering contractors would then be assessed to establish which was able to deliver the best value scheme. The contract would then be let to the successful tenderer.
- 46 Henry Brothers was not included among the eight highest ranking contractors. Henry Brothers subsequently argued that the assessment had to include an analysis of the comparative price or cost of each bid in order to establish the most economically advantageous bid and that the Department’s omission to require the competing tenderers at the primary stage to submit a price was contrary to the Regulations and to the general principles of procurement law. The Department argued that it had a wide discretion and that it might include matters that were unrelated to price.
- 47 The court noted that in awarding a framework agreement on the basis of the offers that were the most economically advantageous, the Department was bound to use criteria linked to the subject matter of the contract. Such criteria must be applied in conformity with all relevant procedural rules and the fundamental principles of community law. Subject to those factors, the contracting authority had discretion as to the criteria to apply. It was not necessary for each of the selected criteria to be of a purely economic nature. However, the court said that the case law did not support the proposition that some criteria related to price might be omitted altogether at the primary competition stage.
- 48 The court said that where the price of the goods or services was not fixed, it would be very difficult to reach any objective determination of what was economically advantageous without a reliable indication of price in relation to which other non-price advantages might be taken into account. The court therefore held that the Department’s procedure did not comply with the Regulations and was not consistent with transparency, the equal treatment of tenderers or the development of effective competition in the public procurement sector.
- 49 The original decision to rely on percentage fees was based upon an incorrect factual assumption that costs would always be the same in the construction industry. The



Department proceeded on the basis that the application of fee percentages to hypothetical bands of contract values was an appropriate means of discriminating between contractors at the primary competition stage. However, during the hearing, the Department conceded that a fee percentage by itself could not predict outturn costs without additional information and that different contractors might be in a position to provide discounts and more advantageous prices (due to greater efficiencies). The incorrect assumption underlining the use of the fee percentage methodology was sufficient to amount to a manifest error.

- 50 Given the discretion afforded to contracting authorities, it would not always be necessary to require tenderers to carry out costing of examples or produce detailed outturn costs at the primary competition stage. Furthermore, the use of fee percentages may be used legitimately as a pricing mechanism. However, in order to be compliant with the Regulations and the relevant principles of community law, such a pricing mechanism must operate in conjunction with the competitive establishment of prices/costs at the secondary competition stage.
- 51 The defect of using fee percentages, without additional information about, for example, costs and efficiencies, was compounded by the non-competitive establishment of specific pricing/costs at the point of awarding specific contracts under the framework. In this case, although the fee percentages were established competitively, the information to which they must be applied in order to function efficiently was not. While the contracting authority may legitimately have been seeking to avoid the problem of low bid/high claims tendering, this could not lawfully be achieved by establishing costs/prices, after the completion of the competition exercise.
- 52 This case is important as it underlines the requirement of transparency and equal treatment of tenderers in public procurement projects. It also demonstrates that care needs to be taken in the design of the public procurement process and the limits of the discretion on contracting authorities in determining award criteria.

Hot Topic 5: Remedies available to unsuccessful bidders

(1) Henry Bros (Nagherafelt) Limited (2) Scott & Ewing (t/a Woodvale Construction Company Limited) v Department for Education for Northern Ireland

- 53 Following the above, the Northern Irish High Court was subsequently required to consider what remedies were available to Henry Brothers following judgment in its favour that the Department had acted in breach of the Public Contracts Regulations 2006 by rejecting Henry Brothers' tender to join a framework agreement. In the case of *(1) Henry Bros (Nagherafelt) Limited (2) Scott & Ewing (t/a Woodvale Construction Company Limited) v Department for Education for Northern Ireland [2008]*⁸ the High Court set aside a framework agreement entered into by the Department for Education for Northern Ireland in breach of the public procurement rules. However, the High Court ruled that contracts already awarded under the framework agreement could not be set aside and that damages were the only remedy available in relation to the award of these contracts.
- 54 Following the earlier judgment in its favour, Henry Brothers sought:
 - 54.1 An order pursuant to the 2006 Regulations that the Department's decision to enter into a framework agreement be set aside;
 - 54.2 A declaration that any contracts concluded pursuant to the secondary competition of the framework agreement be set aside as being contrary to the EC Treaty; or
 - 54.3 Damages.



The Department submitted that since the framework agreement had already been entered into, the jurisdiction of the court was limited to an award of damages. The Regulations state that a court does not have the power to order any remedy other than damages in respect of any breach of duty if the contract in relation to which the breach occurred has been entered into.

- 55 The court subsequently held that a framework agreement was not a contract within the meaning of the Public Contracts Regulations 2006, Regulation 47. This meant that in the event of a breach of such an agreement, the victim of that breach was not limited to claiming damages but was entitled to a declaration that the framework agreement be set aside. The court held that a “public contract” and a “framework agreement” were two separate entities and the Regulations distinguish between those two terms. The court was required to construe the Public Contracts Regulations in light of EU principles which maintained a clear distinction between public contracts and framework agreements. Whilst the right of an aggrieved party should be limited to damages for breach of a specific contract, to impose such a limitation in the case of framework agreements has the potential to be much more damaging to the public in whose interest the principles of transparency, quality, non-discrimination and open competition were to be observed. To maintain rather than set aside the framework agreement would lead to the grant of contracts awarded in breach of the principles of EU competition law. Accordingly, Henry Brothers was entitled to an order setting aside the framework agreement. However, any specific contracts already concluded pursuant to the framework agreement could not be set aside and Henry Brothers’ remedy in relation to those contracts was limited to damages.

Conclusion

- 56 It will be clear from the above that there are a number of hot topics in the area of public procurement law and in respect of which the education sector has been at the forefront. Recent case law has:
- 56.1 Clarified the extent to which procurement rules apply;
 - 56.2 Clarified the extent to which a party has standing to bring a challenge for non-compliance with the procurement rules;
 - 56.3 Confirmed that evaluation criteria need to be adhered to so as to ensure transparency between tenderers; and
 - 56.4 Clarified the remedies available in the event of non-compliance with procurement law, namely that an entire framework agreement may be set aside (coupled with an award of damages for any contracts already let under that framework agreement) in the event of a breach of the procurement rules.

Top Tips for Contracting Authorities

- 57 Given the potential problems that could arise from the public procurement process, contracting authorities would be well advised to:
- 57.1 Consider early on whether the Regulations will apply and if so to what extent;
 - 57.2 Even if the Regulations do not apply, consider general EU principles that need to be adhered to;
 - 57.3 Ensure that the procurement process is transparent. Explain to bidders:
 - 57.3.1 How the process will run;



- 57.3.2 What will happen at each stage; and
- 57.3.3 How bidders will be selected and bids evaluated;
- 57.4 Ensure equal treatment of candidates, particularly with regard to the provision of information;
- 57.5 Once a decision has been made to award the contract, ensure that information is provided to unsuccessful bidders in sufficient time and before the contract is concluded;
- 57.6 If in doubt – take advice!