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Procurement Update.

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Contents

1. Welcome

The Public Contracts Regulations 2015[1] came into force on 26 February 2015 and apply to contracts commenced on or after that date.

As the dust is settling and procurement practitioners are becoming accustomed to the provisions of the new Public Contracts Regulations 2015, we set out below some of the recent case law and guidance which has been published in this area.

To date, we have not seen any substantive judgments given under the 2015 Regulations; however this is not surprising due to the short period of time for which they have been in force. We have, however, seen one particular judgment (the *Edenred* case) which applies the principles of the 2015 Regulations to a procurement commenced before 26 February. This is an interesting approach by the UK courts and we look forward to interpreting and providing guidance on the steady stream of case law which is bound to come as a result of the UK's early introduction of the 2015 Regulations.

[1] For ease of reference, Public Contracts Regulations 2006 will be referred to throughout as the 2006 Regulations, Public Contracts Regulations 2015 will be referred to as 2015 Regulations and the term "Regulations" will be used as a generic term for both.

2. Summary of caselaw[2]

2.1 Can contracting authorities evaluate qualifications and experience at award stage

On 26 March 2015, the Court of Justice of the European Union (**CJEU**) gave a ruling, on a reference from a Portuguese court, relating to the ability of contracting authorities to evaluate the qualification and experience of team members at award stage.

The Portuguese Associação Empresarial da Região de Santarém (**Nersant**) issued a tender for a contract for the supply of training and consultancy services. The tender documents indicated that 40% of the marks for quality would relate to evaluation of the team proposed. Ambiente e Sistemas de Informação SA Geográficas (**Ambisig**) submitted a tender but raised concerns over this criterion with Nersant before doing so. Nersant stated that this criterion was necessary to enable it to evaluate the team that the bidder was putting forward to deliver the services should they be successful in being awarded the contract. Nersant awarded the contract to another bidder and Ambisig brought proceedings to challenge the award on the basis that the award criterion was incompatible with Directive 2004/18/EU.

The Portuguese court referred the question on the validity of the criterion to the CJEU for a preliminary ruling. The CJEU noted that Article 53(1)(a) of Directive 2004/18/EU does not set out an exhaustive list of the criteria which may be used by contracting authorities to determine the most economically advantageous tender and therefore it is open to contracting authorities to decide the criteria for awarding contracts provided these are linked to the subject matter of the contract. Further, the CJEU considered that, where a contract of this nature is to be performed by a team, the abilities and experience of the team members are decisive for the evaluation of the professional quality of the team.

Therefore, the court held that for procurements of services of an intellectual nature, training and consultancy, under Article 53(1)(a) of Directive 2004/18/EU, the "quality" aspect allows the contracting authority to consider the abilities and qualifications of the team proposed to perform the contract.

Comment

The recently introduced 2015 Regulations, implementing Directive 2014/24/EU, specifically permit the evaluation of the "*organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract*" in Regulation 67(3)(b). While this clarifies the ability of contracting authorities to use experience as an award criteria, it is worth noting that the requirement that the experience must have a significant impact on the level of performance of the contract remains subjective.

2.2 Can contracting authorities rely on documents which have not been disclosed?[3]

On 26 March 2015, Mr Justice Coulson upheld the automatic suspension of a contract awarded by Bristol City Council (the **Council**) in favour of Bristol Missing Link Limited (**BMLL**).

On 8 July 2014, the Council issued an invitation to tender for a contract entitled 'Bristol City Council Domestic Violence and Abuse Support Service' (the **Contract**). BMLL, the incumbent provider of these services to the Council, submitted a tender. The Council received two other tenders. Ultimately, BMLL was unsuccessful in the tender and the Council opted to award the Contract to Refuge.

When BMLL received their scores from the tendering process, they found that the individual evaluators gave higher scores in a significant number of areas than the moderated score awarded by the Council. An example presented at the hearing was of scores from the evaluators being 4,4,5,4 and 3, and the Council awarding an overall score of 3. BMLL sought disclosure of the scores awarded to Refuge, however the Council refused to make this information available. BMLL issued proceedings which resulted in the award of the Contract being automatically suspended. The Council applied to have the automatic suspension lifted.

The judge recognised that disclosure causes significant problems in procurement disputes. On the one hand, it is difficult for the unsuccessful tenderer to obtain information to back up its concerns in relation to the tender procedure. In particular, an application for early disclosure may be considered to be a "fishing exercise." Yet, on the other hand, the authority may wish to refuse early disclosure because of the confidential nature of the information, the expense and time incurred in reply to such requests, and the thought that the unsuccessful tenderer will never be satisfied with any response. In light of this conflict, it can be difficult to strike a fair balance.

During the course of the proceedings, the Council sought to rely on evidence which it had refused to disclose to BMLL regarding the evaluation of the tender. Mr Justice Coulson was quick to reject this tactic, stating clearly that contracting authorities cannot withhold

[2] Case C 601/13 *Ambisig v Nersant*, judgment of 26 March 2015.
[3] Bristol *Missing Link Ltd v Bristol City Council* [2015] EWHC 876 (TCC).

information from a claimant and later use this information to blindside them during legal proceedings. He emphasised that disclosure is at the discretion of the contracting authority. However, if the authority decides not to disclose information, it cannot then apply to have an automatic suspension lifted and rely on evidence undisclosed to the Claimant in support of that application.

The court did not lift the suspension as it considered that the advantages to the Council of the suspension being lifted would be non-existent and due to the disadvantages of non-disclosure crucial to BMLL's claim. One issue considered by the judge was the inadequacy of damages for BMLL who are a non-profit organisation. Further, the judge considered that the Council had not significantly demonstrated that there would be a detriment to service users if the Contract was delayed.

Comment

Disclosure is often a tricky issue in procurement litigation. This case should serve as an important reminder to contracting authorities that they cannot seek to rely on documents in court which they have refused to disclose when previously requested. Further, the case highlights the importance of demonstrating a detriment to service users in order to meet the balance of convenience test.

2.3 When does time start to run for bringing a procurement challenge?[4]

This case, heard by Horner J in the High Court of Northern Ireland, was a hearing to determine a preliminary point i.e. whether the plaintiff's claims in this action have been brought out of time.

The case relates to a contract awarded by Northern Ireland Water (**NIW**) for Electrical Inspecting Testing and Repair (the **Contract**) via the negotiated procedure in accordance with the Utilities Contracts Regulations 2006. ROL Testing Limited (**ROL**) was one of a number of interested applicants who were successful at the pre-qualification stage and had been invited to negotiate for the Contract.

The Invitation to Negotiate (**ITN**) documents were uploaded to the eSourcing NI portal on Friday 30 May 2014 at 2.06pm. The documents were not accessed by ROL until Monday 2 June 2014, as the director of ROL was out of the office on Friday 30 May. The ITN was 3,116 pages long and included a set of terms and conditions which required amendment. ROL claims it took most of Monday 2 June to access the documents and superimpose the amended terms and conditions on the standard terms. On Wednesday 4 June, ROL sought a meeting with its accountants for help with pricing, profitability, margins and projections for the tender. This meeting took place on 9 June and the accountants required an entire day to understand the tender process.

ROL sent a clarification request to NIW on 11 June 2014 complaining that the spreadsheet included in the ITN for calculating cost was meaningless. However, NIW responded to say that there was no error with the spreadsheet. ROL was not satisfied and sought further clarification. However NIW confirmed, on 16 June, that there would be no amendments to the spreadsheet.

On a separate point, ROL also complained, on 13 June 2014, that another tenderer had been terminated on two other contracts and this fact should have been disclosed. NIW promised to revert to ROL in due course.

ROL's solicitors issued a Writ of summons on 4 July 2014. The court had to consider the requisite date of knowledge required before the 30 day limitation period for bringing a procurement challenge begins to run i.e. when the claimant knew or ought to have known that grounds for bringing the challenge had arisen. The court considered it would have been reasonable for ROL to have studied the ITN documents over the weekend commencing Friday 30 May 2014. The court also considered it reasonable for ROL to bring in outside expert assistance to help with understanding and completing the tender. It would be reasonable, in the court's view, to give the accountants until 4 June to consider all tender documents and organise a meeting with ROL. The accountants should have been able to determine the error and communicate it to ROL by 4 June at the earliest and at least 6 June. The court noted that, in reality, the accountants did draw the error to the attention of ROL within two days of their meeting, which the court did not consider to be unreasonable. The court considered that, on the balance of probabilities, 6 June 2014 was the date when the hypothetical tenderer would have first acquired the necessary knowledge from its accountants to conclude to there was clear indication of an infringement. Therefore the claim was brought in time i.e. within 30 days of 6 June 2014.

In relation to the alleged contract terminations of two previous contracts, the court considered that the hypothetical tenderer would not, even at that time, have had the requisite knowledge to determine whether grounds for a challenge had arisen as it did not know how NIW had handled the issue of the alleged contract terminations. Therefore, this claim was also brought in time.

Comment

This case is particularly interesting as it sheds further light on the issue of the requisite date of knowledge on which a tenderer knew or ought to have known that grounds for bringing a procurement challenge had arisen. In particular, the fact that the judge allowed

[4] ROL *Testing Ltd v Northern Ireland Water* [2015] NIQB 10 (11 February 2015).

time for the claimant to engage external experts to assist them in understanding and responding to tenders and time for them to review the tender document is interesting as it effectively extends the strict 30 day limitation period. However, it is important to note that limitation issues often depend on the particular circumstances of a case and tenderers are well advised to bring proceedings as soon as possible without assuming that a court will allow additional time for seeking expert advice.

Another interesting case dealing with issues of timing in procurement actions is *Heron Bros Limited v Central Bedfordshire Council*[5]. In this case, an unsealed version of the claim form was sent to the defendant on the same day it was sent to the High Court for issue. The court delayed in returning the claim form to the plaintiff which therefore resulted in the plaintiff not being in a position to serve the claim form within the 7 day period prescribed by the 2006 Regulations. The court held that, because the claim form sent to the defendant was exactly the same as the one received by the court for issue, the defendant had knowledge of the claim and its particulars. The court exercised its powers under the Civil Procedural Rules to amend the unsealed claim form to satisfy the criteria for service set out in the 2006 Regulations.

2.4 When will the court intervene in cases of manifest error in evaluation?[6]

On 14 July 2015, the High Court handed down a judgment in a claim brought by Woods Building Services (**Woods**), the incumbent supplier and ultimately the unsuccessful tenderer, challenging a public procurement conducted by Milton Keynes Council (the **Council**) for the award of a framework agreement for asbestos removal.

The award criteria were weighted 60/40 in favour of quality and, although Woods were the cheapest, the Council selected European Asbestos Services (**EAS)** as the successful tenderer on the basis of the award criteria. Woods issued proceedings challenging the award of the contract to EAS. Woods alleged breaches of equal treatment and transparency as well as manifest errors in the tender evaluation process.

The evaluation of tenders took place in stages. The first evaluation was conducted by two Council employees, one of whom previously worked for Woods. The judge commented on this as inappropriate. Following completion of the first evaluation, a second evaluation was conducted by a senior council employee. During the second evaluation, the evaluator took the scores from the first evaluation as his benchmark, rather than evaluating the tenders afresh. The court raised concerns with this approach as the scores of the first evaluation are likely to have influenced the scores of the second evaluation. The scores were adjusted at each stage and there were virtually no written notes in relation to the evaluation process. Moreover, the few notes available were unsatisfactory as they were very brief and merely paraphrased the evaluation criteria without any statement of reasons.

The court considered each of the individual quality questions and the scores given to both Woods and EAS for each answer to determine whether there was any case of manifest error on the part of the Council. The court also considered whether there were any underlying issues relating to breaches of transparency or equal treatment.

The court noted that the significant differences in the scores awarded to Woods and EAS were surprising as Woods' answers were highly detailed and showed commitment whereas EAS' answers lacked detail and included a significant amount of management speak. The court held that "manifest error" was broadly equivalent to *Wednesbury* unreasonableness. The court added that whether an error is manifest will depend on its materiality and not on whether it would be apparent to a layman. The court considered that the amended scores would have a material effect on the outcome of the process.

In a follow-on judgment on remedies, the court set aside the Council's original decision and declared that Woods' tender was the most economically advantageous tender. However, the court did not consider it appropriate to make a mandatory injunction in relation to the award of the contract and refused to order the council to award the contract to Woods. The court stated that, while a mandatory injunction could be granted in a procurement case, this would only be in exceptional circumstances. The court held that Woods is entitled to damages.

Comment

This case is interesting because the court rarely interferes with a contracting authority's discretion to evaluate tenders. It was clear to the court in this case that there had been instances of manifest error which required rectification. This should serve as a warning to contracting authorities who sometimes rely on the idea that a court will generally not interfere with their discretion. This case also highlights the importance of keeping comprehensive contemporaneous documentation of decisions made during the evaluation process which do not merely repeat the relevant criteria but provide an explanation of the decision.

The case is also a reminder for contracting authorities to consider any past or present relationships between members of the evaluation panel and tenderers and to exclude from the evaluation panel any member with any such relationship. Finally, the case

[5] *Heron Bros Limited v Central Bedfordshire Council* [2015] EWHC 604.
[6] *Woods Building Services v Milton Keynes Council* [2015] EWHC 2011 and *Woods Building Services v Milton Keynes Council [No 2: Remedy] [2015]* EWHC 2172 (TCC).

shows that any review of an evaluation process must start afresh and not be tainted by the views of the original evaluation panel.

Another recent case highlighting the importance of keeping comprehensive, contemporaneous notes during a procurement process, in particular the evaluation process, is *Geodesign Barriers Limited v The Environment Agency*[7]. In this case, a challenge was brought to a procurement process for temporary flood barrier systems. During the course of the preliminary hearing, the court described the defendant's evaluation as "most unsatisfactory", primarily because there were no documents of any kind produced further to evaluation meetings at which the tenders were scored and their compliance with mandatory requirements assessed. The court considered that this raised significant questions as to the transparency of the procurement process.

2.5 Are damages a discretionary remedy?[8]

On 23 January 2014, Mr. Justice Edwards-Stuart ruled on a preliminary issue brought by the Nuclear Decommissioning Authority (**NDA**) addressing whether the court would have the discretion not to make an award of damages.

This procurement involved the award of a contract for decommissioning of nuclear installations. Energy Solutions EU Limited (**Energy Solutions**) submitted a tender as part of a consortium called Reactor Site Solutions (**RSS**). RSS was selected to submit final tenders and did so; however RSS was later notified that the consortium had not been successful. The NDA notified tenderers that the standstill period would end on 14 April 2014 which actually meant there was a 14 day period instead of the usual 10 days. Energy Solutions requested further information from the NDA who refused to extend the standstill period further. NDA announced on 15 April that it had entered into a contract with the successful tenderer. Energy Solutions issued proceedings on 28 April 2014.

The court considered two issues:

1. whether Energy Solutions is entitled to any award of damages having failed to start proceedings during the standstill period; and
2. whether the court has a discretion not to make any award of damages and, if so, the basis on which that discretion could be exercised.

The court found that, where a party suffers loss as a result of a breach of a contracting authority's public procurement obligations, it is entitled to, at the least, compensation in damages. The court highlighted the fact that the 2006 Regulations allow a claimant to bring an action within 30 days of when it knew or ought to have known of the breach. The court considered that this expressly permits claimants to bring proceedings after the standstill period.

In relation to the court's discretion not to award damages, the court found that damages are not a discretionary remedy where the claimant has suffered loss in consequence of a breach by a contracting authority of its obligations under the Regulations.

Comment

This case demonstrates that an economic operator has a choice as to whether it wants to bring a challenge during the standstill period, thereby automatically suspending the contract or to bring a claim for damages after the contract has been entered into but within the 30 day limitation period. This allows economic operators freedom to choose the remedy which best suits their needs, especially where, due to the difficulties incurred throughout the procurement process, an economic operator no longer feels that it could work with that contracting authority. The economic operator's right to take part in a compliant procurement process remains and should therefore be compensated by damages when a breach of the Regulations has occurred and the economic operator has suffered loss as a result.

2.6 Material variation[9]

On 1 July 2015, the Supreme Court dismissed an appeal by Edenred (UK Group) Limited (**Edenred**) against HM Treasury's decision that the Government's tax free childcare (**TFC**) scheme is to be administered by National Savings and Investments (NS&I) through its existing outsourced services contract with a private operator (**Atos**). The Supreme Court upheld decisions by the High Court and the Court of Appeal on this issue.

TFC was announced in the 2013 budget and is due to be introduced in Autumn 2015. The Government decided to keep the provision of child-care accounts, necessary for the administration of TFC, in-house via NS&I, which is a government department. NS&I outsourced its operational services to Atos IT Services UK Ltd via a publically procured tender process in April 2014. HMRC intends to enter into a memorandum of understanding (**MoU**) with NS&I to set out the requirements for the TFC service including service delivery standards. NS&I will then deliver the service via the Atos contract which will be amended to reflect the specific requirements of the TFC service.

[7] *Geodesign Barriers Limited v The Environment Agency* [2015] EWHC 1221 (TCC).
[8] *Energy Solutions EU ltd v Nuclear Decommissioning Authority* [2015] EWHC 73 (TCC).
[9] *Edenred (UK Group) Limited and another (Appellants) v Her Majesty's Treasury and others (Respondents)* [2015] UKSC 45.

Edenred argued that:

1. the MoU involves a public services contract (under the 2006 Regulations) or an economic opportunity (within Article 56 TFEU);
2. the arrangements result in a material variation of the contract between NS&I and Atos.

The Supreme Court dismissed the claim that a public contract had been created between HMRC and NS&I.

The Supreme Court considered the argument that the amendments involve a material variation of the contract. Although the challenge was brought under the 2006 Regulations, the parties sought to rely on the provisions of the 2015 Regulations in relation to contract variations and the court accepted this. The Supreme Court found that the OJEU notice had provided for future services up to a value of £2 billion and the additional services for TFC did not exceed that value. The court held that the prohibition on modification to encompass services not initially covered does not preclude expansion that is envisaged and advertised in the initial procurement process. The question is whether the services were covered by the original contract, including its provisions for contractual variations. The Court noted that in this case the expansion did not alter the essential nature of the services provided and included restrictions to maintain the economic balance of the contract and Atos' profit margin. The court also emphasised that each case will be determined on its own facts and highlighted the importance of looking at all the procurement documents to determine whether they include sufficient provision for the amendments.

The court also considered whether the modifications met the requirement of a "clear, precise and unequivocal review clause" set out in Regulation 72(1)(a) of the 2015 Regulations. The Court of Appeal had found that the clauses were sufficiently clear and the Supreme Court inclined to agree with this but did not rule on this as it was not necessary to determine the appeal.

In dismissing the appeal, the Supreme Court set aside the interim order preventing HMT from implementing the TFC scheme.

Comment

This case is particularly interesting as the court accepts the applicability of Regulation 72 of the 2015 Regulations to a procurement commenced prior to 26 February, i.e. the date the 2015 Regulations were introduced. This is in line with guidance from the Crown Commercial Service which states that Regulation 72 of the 2015 Regulations applies to contracts procured before 26 February 2015. The court was referred to the 2015 Regulations by both parties and agreed that it was appropriate to test the validity of the amendment by reference to the 2015 Regulations. It is worth noting that the court did not consider the application of the 2015 Regulations in any detail as both parties appeared to agree on this point.

3. Procurement News Roundup

3.1 Mystery Shopper Scheme

The Cabinet Office Crown Commercial Service (**CCS**) issued Public Procurement Note 09/15 on 1 June 2015. The note sets out the new rules on the Mystery Shopper Scheme which are procurement investigations carried out by the CCS Mystery Shopper Service. The scheme has now been given a statutory footing through the entry into force of the Small Business Enterprise and Employment Act 2015.

If investigated under the scheme, a contracting authority must give reasonable assistance and must provide information and documents required by the Mystery Shopper within 30 calendar days. It is important to note that the scheme does not apply to bodies exercising functions that are wholly or mainly devolved (i.e. most contracting authorities in Northern Ireland). However, for tenderer involved in procurements run by English contracting authorities, recourse to the scheme may be an alternative to issuing proceedings in the courts, particularly in circumstances where the contract has already been entered into or the limitation period has expired.

3.2 Cabinet Office Guidance on 2015 Regulations

The Cabinet Office Crown Commercial Service (**CCS**) has published a number of guidance notes on issues arising from the introduction of the 2015 Regulations. Please note that some of these are not applicable in Northern Ireland as Part 4 of the 2015 Regulations does not apply to bodies exercising functions which are wholly or mainly devolved. However, a number of the guidance notes do apply and provide some useful guidance.

3.2.1 Guidance on amendments to contracts during their term

This guidance provides an overview of the provisions contained within Regulation 72 of the 2015 Regulations. In particular, the guidance sets out the key points, as follows:

- A contract/framework may change without re-advertisement in the OJEU where:
    - the change is provided for in the initial procurement documents in a clear, precise and unequivocal review clause; or
    - the change is not "substantial" as defined in Regulation 72(8).
- A contract/framework may change without re-advertisement in the OJEU where:
    - additional works, services or supplies "have become necessary" and a change of supplier would not be practicable (for economic, technical or interoperability reasons) or would involve substantial inconvenience/duplication of costs (limited to 50% of original contract price);
    - the need for change could not have been foreseen by a "diligent" contracting authority, provided these changes do not affect the nature of the contract/framework or exceed 50% of the price of the original contract;
- A contract/framework may change without re-advertisement in the OJEU where:
    - it is a minor change that does not affect the nature of the contract/framework;
    - it does not exceed the relevant threshold; and
    - it does not exceed 10% (services or supplier) or 15% (works) of the initial value.
- A contract/framework may change without re-advertisement in the OJEU where certain corporate changes have occurred in the supplier such as merger, takeover or insolvency, provided;
    - the new supplier meets the original qualitative selection criteria; and
    - other substantial modifications are not made to the contract/framework.

Further the guidance provides answers to a number of frequently asked questions including the question whether Regulation 72 applies to contracts awarded before the 2015 Regulations. The CCS believes that it is the date on which the amendment is made that matters, not the date when the contract was first awarded. We have seen above that the Supreme Court has accepted this position in the *Edenred* case.

The guidance can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417926/Guidance_on_Amendments_to_Contracts_rev_25_March_2015.pdf

3.2.2 Guidance on dynamic purchasing systems

Dynamic purchasing systems (**DPS**) existed under the 2006 Regulations. Amendments introduced by the 2015 Regulations are designed to make them more flexible and usable by contracting authorities. The guidance sets out what has changed under the 2015 Regulations, as follows:

"The basic principles remain from the old DPS, but there are several significant changes. Suppliers no longer have to submit an "indicative tender" with their request to join the DPS. The old obligation for authorities to publish a further simplified advertisement in the OJEU each time they wish to award a contract under a DPS no longer applies. The default four year limit on the duration of a DPS has been removed."

The guidance also provides a step-by-step guide to the two main stages of establishing a DPS i.e. (1) establishing the DPS and adding additional suppliers; and (2) awarding specific contracts using the DPS, highlighting the key points contracting authorities need to consider.

The main points regarding DPS are as follows:

- DPS must be operated as a wholly electronic process;
- DPS is similar to a framework agreement however suppliers can join at any time;

- DPS must be set up using the restricted procedure;
- All suppliers who meet and pass the exclusion and selection criteria must be admitted to the DPS;
- Contracts are awarded on the basis of the award criteria which must be set out in the contract notice;
- There is no obligation to carry out a standstill process when contracts are awarded under a DPS;
- Contracting authorities must either send a contract award notice to the OJEU within 30 days of awarding a contract under a DPS or send groups of contract award notices on a quarterly basis (within 30 days of the end of each quarter).

The guidance can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417942/Guidance_on_Dynamic_Purchasing_System.pdf

3.2.3 Guidance on the light touch regime

The 2015 Regulations see the abolition of the distinction between Part A and Part B services and instead introduce what is commonly referred to as the "light touch regime (**LTR**)". This is a specific set of rules for certain service contracts that tend to be of lower interest to cross-border competition and include certain social, health and education services, amongst others.

The LTR was introduced due to the European Commission's concern that some Part B service contracts were of cross-border interest but were not being exposed to EU wide competition. The guidance sets out some of the main points regarding the LTR, as follows:

- There are fewer services in LTR than there were in Part B and the catch-all "other services" category no longer exists;
- There is a relatively high threshold of €750,000 (sterling equivalent of £625,050);
- Below threshold contracts do not need to be advertised in the OJEU;
- There are a small number of procedural rules applicable to LTR:
    - Publication of OJEU and contract award notices;
    - Compliance with Treaty principles of transparency and equal treatment;
    - Conduct of procurement in conformance with information provided in the OJEU notice;
    - Requirement for reasonable and proportionate time limits.
- Contracting authorities can use any process or procedure to conduct the procurement;
- There is a more flexible approach to award criteria;
- There is the possibility of reserving certain LTR contracts for organisations meeting certain criteria.

The guidance can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409543/GUIDANCE_ON_THE_NEW_LIGHT_TOUCH_REGIME_FOR_HEALTH_SOCIAL_EDUCATION_AND_CERTAIN_OTHER_SERVICE_CONTRACTS.pdf

3.2.4 Guidance on framework agreements

There have been a small number of changes to the operation of framework agreements with the introduction of the 2015 Regulations. The guidance highlights that the main changes are:

"*[T]he clarification of the rules on identifying the users of the framework agreement, increased flexibility in the rules on setting up and calling off multi-supplier framework agreements, and the requirement to publish award notices for call-offs on Contracts Finder*[10]."

The key points relating to framework agreements set out in the guidance are as follows:

- The contract notice must clearly identify the contracting authorities that can use the framework;
- Call-off contracts based on framework agreements may be longer than four years and may extend beyond the expiry of the framework;
- Single provider frameworks must be called-off in accordance with the terms and conditions set out in the framework agreement;
- Multi-supplier framework agreements can now comprise just two suppliers (previously there was a minimum of three);
- There are three ways to call-off multi-supplier frameworks:

[10] NOTE: The requirement to publish on Contracts Finder does not apply to contracting authorities whose functions are wholly or mainly devolved functions i.e. most contracting authorities in Northern Ireland.

- Direct award without re-opening competition;
- Mixture of direct award and mini-competition (new);
- Mini-competition.

The guidance can be accessed here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/430313/public-contracts-regulations-guidance.pdf

3.2.5 Other guidance

Further guidance published by the Crown Commercial Service on the 2015 Regulations includes:

- Guidance on awarding contracts;
- Guidance for completion of Public Procurement Regulations 2015 forms and notices in the transition period before new SIMAP forms are available;
- Guidance on the Standstill Period;
- New requirements relating to Pre-Qualification Questionnaires to help businesses access Public Sector Contracts and Standardised Pre-Qualification Questionnaire*;
- Guidance on the new transparency requirements for publishing on Contracts Finder*;
- Statutory guidance for Contracting Authorities and Suppliers on paying undisputed invoices in 30 days down the supply chain*.

*These guidance notes are not applicable in NI as Part 4 of the 2015 Regulations does not apply to contracting authorities whose functions are wholly or mainly devolved functions i.e. most contracting authorities in Northern Ireland.

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