
Public Procurement

Our nationally recognised, specialist procurement team, led by partner Tim Heywood, advises on all aspects of the public procurement regime and enjoys a reputation for producing advice and documentation that is informed by their in-depth knowledge of the EU and UK procurement law.

Our clients are central, regional and local government; health service bodies; RSLs and the third sector as well as major companies bidding to secure public contracts. We make it our business to understand the client's operating environment and key drivers.

We advise in the context of regeneration; shared services; the Government's Operational Efficiency Programme; IT projects; health commissioning; security and defence related projects; leisure schemes and affordable housing.

Our clients value, above all, our clear, practical advice and support:

During the pre-procurement stage

- advice on the application of the EU procurement rules and the effective use of exemptions
- pre-procurement engagement with suppliers
- designing procurement strategies and innovative procurement models
- choice of appropriate award procedure
- achieving social and environmental policy objectives
- advising supply-side organisations on tendering strategies

At the procurement stage

- producing the OJEU contract notice and other advertisements; pre-qualification documents and tender documents
- drawing up effective and compliant selection, evaluation criteria and methodologies
- responding to bidder queries
- drafting and negotiating the contracts
- shaping and managing competitive dialogues
- designing framework agreements
- drafting or reviewing 'Alcatel' letters and handling the debrief stage

At close of procurement and post contract award

- responding to or making legal challenges
- advice on rights and remedies
- advising on scope for varying the contract without a new competition

We devised the legal documentation for central government programmes, such as Building Schools for the Future (BSF) and the DfT road pricing pilot project; we are frequently called on to advise on and support individual projects under NHS LIFT; Equitable Access and shared services arrangements as well as handling the more routine, *ad hoc* procurement questions that inevitably arise on smaller procurements.

The team also advises on related state aid issues, and other aspects of Community trade law.

Clients have access to our extensive programme of procurement update seminars, workshops and electronic Updates and Alerts summarising key developments.



- We advise bidder clients on rights and remedies under the public procurement regime providing a detailed analysis of evaluation methodologies and identifying potential vulnerabilities in a procurement.

We acted for a preferred bidder in a competitive dialogue, but the authority was contemplating revoking the client's preferred bidder status as a result of a challenge from a disappointed bidder. We advised on whether changes in indicative funding terms amounted to a "substantial modification" under the competitive dialogue rules. Our advice paved the way to ensuring the client kept their preferred bidder status.

- Obtaining Information: a debriefing is an invaluable opportunity for a bidder to find out whether there may be grounds for a challenge. It is also potentially an opportunity to find out information about your competitors' bids, providing you with added market intelligence. We advise on what information may be disclosable and on the best approach to making or responding to a formal request.

We guided a global telecommunications company through a debriefing and information request process in relation to a contract worth in excess of £500 million, identifying key gaps in the information and persisting with requests until the full picture was obtained. As a result, the client was able to enter into valuable negotiations with the authority.

- Mounting a challenge: We advise clients on the technical, commercial and strategic aspects of mounting a formal legal challenge against an award decision including the availability of interim orders and claims for damages.

We acted for a pharmaceutical company which lost a valuable and strategically important tender process with an NHS Trust. As a result of our intervention and identification of the flaws in the process, the trust abandoned the procurement giving our client the opportunity to re-tender. In some cases we have also obtained contributions towards our client's wasted costs.

- Responding to challenges: We provide public sector clients with swift analysis and advice on complaints/appeals and challenges enabling a robust response to be made based on evidence and risk assessment. We are familiar with the procedures of the NHS CC Panel and actively advise on handling such complaints.

We advised an NHS Trust which had run what one bidder claimed was a flawed procurement process. Following our advice on the risks, and after their initial nervousness, our client decided to stand firm and resist the challenge. The challenger backed down.

Please direct all procurement questions to Tim Heywood



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