



COMMISSION ADVOCATES SPEEDING UP THE PROCUREMENT OF MAJOR PUBLIC PROJECTS

In light of the current economic crisis, the European Commission announced on 12 December 2008 that the accelerated procurement procedure is presumed to be justified for urgency reasons in relation to awards of contracts for major public projects during 2009 and 2010. This means that a Contracting Authority can reduce the time limit in a restricted procedure from a minimum of 37 days to a minimum of 10 days for a request to participate and reduction in time limit for selected candidates to submit their tenders from 40 to 10 days.

For more details see:

http://ec.europa.eu/internal_market/publicprocurement/index_en.htm

IMPORTANCE OF DISCLOSING AWARD CRITERIA

A recent English case indicates that a contracting authority must disclose the criteria it proposes to use for assessing tenders, their weighting and sub-criteria. Furthermore a contracting authority must apply those criteria properly during the evaluation stage.

For more details see

Letting International Limited v London Borough of Newham High Court (England) 7 July 2008

DEFENCE PROCUREMENT

Defence markets will be opened to more transparent tendering procedures with the European Commission's draft directive on the procedures for the award of certain public works contracts, public supply contracts and public services contracts in the fields of defence and security. The draft directive aims to apply the internal market principles of transparency, openness and non-discrimination to defence and security markets, enabling companies to tender more easily for contracts in other member states.

SETTING ASIDE A FRAMEWORK AGREEMENT

The Northern Irish High Court has set aside a framework agreement entered into by the Department of Education for Northern Ireland in breach of the public procurement rules. The breach arose from the Department's sole reliance on the fee percentage in evaluating the commercial component of tenders which the Court held did not satisfy the EU requirement of M.E.A.T. or lowest tender price tender.

However, the Court ruled that contracts already awarded under the framework agreement (i.e. the call offs) could not be set aside and damages was the only remedy available to the aggrieved bidder. The Court distinguished between

framework agreements and framework contracts. It found that a framework agreement is not a public contract for the purposes of Article 2.6 to the Remedies Directive. However, call offs made under a framework agreement can be considered a public contract. Article 2.6 of the Remedies Directive provides that once a contract has been entered into, the only relief available to those harmed by an infringement of the procurement rules, is an award of damages.

For more details see:

Henry Brothers v. Department of Education for Northern Ireland (No.3), 19.12.08

RDJ PROCUREMENT SERVICES

RDJ offer specialist advice to private, public sector and utilities clients on all aspects of public procurement (supplies, services and works contracts) including:

- Preparing and advising on procurement documents such as contract notices, instructions to tenders, prequalification questionnaires
- Advising on the procurement process, the appropriate procedures, conduct of the evaluation of tenders and contract award issues
- Managing compliance through the structuring of procurement transactions
- Interpretation of EU and Irish procurement law
- Advising on EU developments such as communications from the Commission and European Court of Justice (ECJ) decisions
- Pursuing remedies for breach of procurement rules

FINOLA MCCARTHY **Partner**



Finola McCarthy specialises in construction, public procurement and environmental law. She advises on all types of construction and engineering projects both public and private sector, from tendering procedures, through to contract documents and dispute resolution.

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Aoife Shields practises in the areas of Construction and Environmental and Public Procurement. She advises businesses across a range of industry sectors; statutory bodies and private clients on all aspects of environmental, construction and public procurement law.

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