

Procurement law for contractors and suppliers

Understand your rights, maximise
contract opportunities and curtail risk

Thursday 3 December 2009
Central London



Chaired by:
NIGEL GIFFIN QC
11KBW

Speakers:
ADRIAN BROWN
Herbert Smith LLP

TIM COWEN
T.R.W.Cowen Limited

MATTHEW WYNNE
Office of Government Commerce

MARK CLOUGH QC
Addleshaw Goddard LLP

JENNIFER MCEWEN
Berwin Leighton Paisner LLP

RUTH SMITH
Pinsent Masons LLP

MICHAEL BOWSHER QC
Monckton Chambers

SARAH HANNAFORD QC
Keating Chambers

Attending this authoritative event will allow you to:

- Hear directly from the **Office of Government Commerce** on the changes introduced through the implementation of the **Remedies Directive**
- Assess effective strategies for **tendering**, including maximising **contract opportunities**
- Debate the scope for **amending existing contracts**, following the *Presstext* judgment
- Understand tactics for **challenging** procurement decisions
- Discuss the **award of damages** in procurement cases

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ADRIAN BROWN is Counsel in the Brussels office of international law firm Herbert Smith. He has advised clients on all aspects of the EU procurement rules for nearly 20 years. Adrian also writes and speaks widely on the subject and is the Assistant Editor and European Court correspondent of the Public Procurement Law Review.

TIM COWEN is CEO of T.R.W.Cowen Limited, a consultancy company set up to advise on Public Policy/Regulation, Competition and Commercial matters in the information technology sector. Tim is a member of the EU Business Affairs Council, and Chairman of the Competition Panel at the Confederation of British Industry (CBI) and Chairman of the International Association of Commercial and Contract Management (IACCM), and a Visiting Fellow of the British Institute of International and Comparative Law (Biicl).

MATTHEW WYNNE has 14 years' public sector experience, mostly in procurement and project management. With the OGC for 6 years, Matthew currently works in OGC Policy and Standards Division, focussing on EU and international matters. His main responsibilities include project-managing the transposition of the EU Remedies Directive and developing OGC's guidance on competitive dialogue. His previous career includes working in the procurement functions of the Department for Work and Pensions, the Food Standards Agency and the Police Service.

MARK CLOUGH QC is a partner in the Competition and Procurement team at Addleshaw Goddard. He is the only specialist competition and procurement solicitor to be a Queens Council. He has practised UK and EU competition law before the UK competition authorities and courts as well as the European Commission in Brussels and European Courts in Luxembourg for over 20 years. Recent procurement cases include Henry Bros and McLaughlin & Harvey and representing clients in disputes involving local authorities, central government and utilities acting for the public sector and utilities as well as tenderers.

JENNIFER MCEWEN is a member of the EU and Competition law team. She advises on all aspects of UK & EC competition law, including merger control, competition investigations and competition compliance. Jennifer also has extensive experience of advising clients on public and utilities procurement law.

RUTH SMITH is a partner in the EU and Competition Group of Pinsent Masons LLP and leads the firm's national public procurement team. She advises utilities, public and private sector clients on public procurement and tendering from a UK and EU perspective, with a particular focus on providing solutions for complex projects including public private partnerships. Ruth is recognised in Chambers 2009 as "a leading light in terms of her public procurement knowledge".

MICHAEL BOWSHER QC has appeared in many of the major UK procurement cases over the last decade. He is described as 'absolute dynamite' by Chambers & Partners and a 'real authority on procurement law' by Legal 500. Michael is involved in a large number of matters calling for advice in planning the procurement or major construction and IT projects, or in establishing sophisticated procurement arrangements. He is also heavily involved in advising clients how best to respond to challenging situations evolving during the tender process. He has represented clients in injunction proceedings and claims for damages for breach of procurement rules.

SARAH HANNAFORD QC is a member of Keating Chambers. She specialises in construction, engineering and energy disputes with a particular focus on procurement law and regularly advises Government bodies, local authorities and industry clients on complex procurement issues. Sarah has been involved in many of the leading procurement cases including *Amaryllis Ltd v HM Treasury, R (on the application of the Law Society) v Legal Services Commission & the Lord Chancellor* and *BFS Group Ltd v (1) Secretary of State for Defence (2) Purple Foodservice Ltd*.

Why attend this conference?

The **Remedies Directive** is set to be implemented in the UK on the 20th December 2009. The Directive will increase the **sanctions** available for breaches of the public procurement rules. The new provisions introduce '**ineffectiveness**' as a penalty for infringing the rules, a longer **time limit** for challenging decisions, and the strengthening of the '**standstill**' obligations. Contractors need to be aware of how the new public procurement regime may put their contracts at risk. Furthermore, contractors need to understand how the new regulations impact upon their ability to challenge procurement decisions.

Chaired by **Nigel Giffin QC, 11KBW**, the leading authorities in procurement law will analyse the latest case law and legislative developments, and provide guidance on what this means in practice. Attending this authoritative conference will enable you to answer the following topical questions:

- What steps should be taken if there are **anomalies** in the contracting authorities' tendering procedure?
- How will the **Remedies Directive** impact upon the procurement process?
- What are contracting authorities' obligations to **disclose** information for award criteria and weightings?
- In what circumstances can existing contracts be **amended**?
- When are **development schemes** covered by public procurement rules?
- What options are available for **unsuccessful bidders**?

Who should attend?

This conference is a must-attend event for solicitors and barristers practising in public procurement law; legal, procurement and purchasing officers from the private sector; suppliers of goods, works and services; and anyone else who needs to get to grips with the latest developments in public procurement law.

Hear what our July 2009 Procurement Law Conference delegates said:

"Informative, stimulating and thought-provoking"

Neil Edwards, Carmarthenshire County Council

"An excellent overview of the latest developments in this fast-changing area of the law"

Catherine Thompson, Carson McDowell

"Overall very good, very informative course covering procurement hot topics with very good range of speakers"

Julie Prior, Dickinson Dees LLP

PROGRAMME – Thursday 3 December 2009

09.00	Registration & Coffee	12.15	Disclosure of award criteria <ul style="list-style-type: none">• Lessons from <i>Lianakis</i> and other ECJ and UK cases• Understanding contracting authorities' obligations to disclose information for award criteria and weightings• Relevance of selection criteria MARK CLOUGH QC , <i>Partner, Solicitor Advocate, Addleshaw Goddard LLP</i>
09.25	Chair's opening remarks NIGEL GIFFIN QC , 11KBW	13.00	Lunch
09.30	The application of the EU procurement rules <ul style="list-style-type: none">• When do the rules apply?• How contracts are categorised: works, supplies, Part A and Part B services• Financial thresholds• Excluded contracts including the "in house" Teckal exception (<i>LAML</i>)• Understanding different procurement procedures and when they can be used• The application of the EC Treaty principles of transparency and non-discrimination to excluded contracts; what do those principles require in practice? ADRIAN BROWN , <i>Of Counsel, Herbert Smith LLP</i>	14.00	Amending and renewing contracts <ul style="list-style-type: none">• In light of the <i>Presstext</i> judgment, what is the scope for amending existing contracts without triggering the need to re-tender?• Amending contracts in a volatile economic climate• Renewal of contracts if current contractor is underperforming JENNIFER MCEWEN , <i>Senior Associate, Berwin Leighton Paisner LLP</i>
10.15	Effective tendering <ul style="list-style-type: none">• Maximising contract opportunities - how can the Government's increasing need for cost reduction and efficiency improvements be squared with suppliers' needs for profitable contracts and revenue certainty?• Preparation of tender - anticipating the effect of new remedies• Successful bidding tactics - the importance of most economically advantageous offer; politics and local government• Effective management of relationships with contracting authorities - IACCM Commitment Management and the importance of methodology for behaviour TIM COWEN , <i>Chief Executive Officer, T.R.W.Cowen Limited</i>	14.45	Development schemes and projects <ul style="list-style-type: none">• When are development schemes covered by Public Procurement Rules?• The implications of the ECJ's decision in <i>Jean Auroux v Commune de Roanne</i> (Case C-220/05) - the current position and guidance RUTH SMITH , <i>Partner, Pinsent Masons LLP</i>
11.00	Coffee	15.30	Tea
11.15	Keynote address: The Public Procurement Remedies Directive <ul style="list-style-type: none">• The view from the European Commission<ul style="list-style-type: none">– Key features and aims of the new directive– Contracts outside the scope of the directive– Enforcement regime• The view from the OGC<ul style="list-style-type: none">– Implementation issues– Standstill obligations– Remedies and sanctions (including contract 'ineffectiveness') EUROPEAN COMMISSION (Invited) MATTHEW WYNNE , <i>Senior Policy Advisor, Office of Government Commerce</i>	15.45	Tactics for challenging procurement decisions <ul style="list-style-type: none">• Options for unsuccessful bidders• Obtaining information about decision making procedures• Timing for valid challenges• Injunctions• Setting aside decisions• Impact of the amendments to the Procurement Regulations MICHAEL BOWSHER QC , <i>Monckton Chambers</i>
12.00	Q & A	16.30	Damages in procurement cases <ul style="list-style-type: none">• Damages claims• Assessing the impact of <i>Harmon</i> and other European and UK cases SARAH HANNAFORD QC , <i>Keating Chambers</i>
		17.00	Chair's closing remarks
		17.05	Conference ends

Chaired by:

NIGEL GIFFIN QC is a barrister at 11KBW. He has a broad public law practice and a particular interest in procurement law. He advises both public authorities and contractors, and has appeared in many of the cases that have gone to court in England and Northern Ireland, including: *Letting International v Newham*; *Risk Management v Brent*; *Federal Security v PSNI*; *Irish Waste v NI Water*; *Natural World v Arc21*; *Rapiscan v HMRC*; *Deane Public Works*; *R v Brent LBC ex p. O'Malley*; *Severn Trent v Welsh Water*; and *Menai Collect*.

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- Remedies Directive Webinar**, 27 November 2009

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