

NHMF Maintenance Conference 2007

Innovative contracting under the EU Regulations

Andrew Millross
Partner - Anthony Collins Solicitors LLP

January 2007

Anthony Collins
solicitors

Coverage

- Revision & overview
- New openness requirements
- Framework agreements
- Buying clubs
- Electronic procurement
- Update on challenges

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Classification (1)

- Works, services, supplies split
- Gas & electrical servicing – Part A
- “Common repairs” – works
- Planned maintenance & cyclical decorations – works

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Classification (2)

- Kitchens & bathrooms – supply/works & supply
- Building cleaning – Part A
- Grounds maintenance – Part B
- “Mixed contracts” – main object/greater value

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Thresholds

- Works: £3,611,319
- Services: £ 144,371
- Supplies: £ 144,371
- Net of VAT
- Next update 1 January 2008

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Valuation and aggregation

- Value over contract life (NB materials)
- Value the contract then aggregate
- Works – “same work”
- Services – “similar” services contracts over 12 months

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EU Treaty

- Interpretative Communication
- Specification
- Technical standards
- “Local labour” clauses

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Purchasing options

- Individual procurement (sole or joint)
- Framework agreement (existing or new)
- Central purchasing body

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“Openness” requirements

- Prequalification & selection
 - requirements
 - criteria
- Award Criteria
 - “clarity”
 - weighting/descending order of importance
- Bidder debrief

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Framework agreements (1)

- Definition
 - call off contract
 - term contract
- Types
 - single provider
 - multiple provider (minimum 3)
- Must include “key terms including price”

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Framework agreements (2)

- Call offs
 - “within the terms of the FA”
 - “no substantial changes”
- Multi framework supplier selection
 - “by application of the terms of the FA”
 - mini competition (all providers)
 - use of award criteria

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Buying clubs


- Terminology
 - procurement consortia
 - “central purchasing body”
- Purchasing “from” or “via” and effect
- Interface with framework agreements
- Risk and indemnity?

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Dynamic Purchasing system

- “Catalogue purchasing”
- Set up under open procedure
- New OJEU notice before each call off
- On-line tenders from all “admitted” to the system
- Cumbersome

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Electronic auctions (1)

- Availability
 - after any standard procedure
 - not for “intellectual performance”
- System requirements
 - Electronic signatures
 - integrity of bids
 - password protection

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Electronic auctions (2)

- Highlight in OJEU contract notice
- “Specification” for auction process
- Mathematical bid ranking
- Bidders see their own rankings throughout the auction
- Identity of other Bidders kept secret

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Update on challenges

- New remedies proposals
- Contractors
- Housing Corporation approach

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For further information please contact Andrew Millross

andrew.millross@anthonicollins.com
0121 212 7473



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