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DECEMBER 2009

Welcome to Public Procurement Matters from the experts at Cobbetts. In this edition:

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OGC publishes new guidance on land development agreements

The OGC has just published a long awaited commentary on the inter-play between the public procurement rules and land development agreements. This subject has been in the spotlight since the notorious *Auroux v Roanne* case of 2007, which highlighted that land transfers from public authorities which impose associated specified works obligations on developers are “public works contracts” and therefore subject to mandatory application of the public procurement rules if the relevant value thresholds are crossed. The OGC paper offers some further thoughts in relation to this. It seeks to clarify what are the “specified works obligations” necessary to place a land development agreement within the ambit of the public procurement rules, and in particular what sort of conditions in a land development will fall short of this test and thereby escape the rules.

The relevant law on public works contracts

Article 2(1) of the Public Contracts Regulations 2006 (PCR) defines a public works contract as “a contract in writing for consideration (in cash or in kind): (a) for the carrying out of a work or works on behalf of a contracting authority; or (b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to particular specified requirements”. In its paper the OGC has broken this down further into asking the following questions for the purposes of determining if a development agreement includes a public works contract, namely:

- Is there a work or works required or specified by a contracting authority?
- Is there an enforceable obligation (in writing) on a contractor to carry out that work or works?
- Is there some pecuniary interest for carrying out this work (not necessarily a cash payment)?

If the above elements are all met then it is likely that the development agreement involves a public works contract subject to the procurement rules.

The Roanne case

This European Court of Justice (ECJ) case addressed these issues. It involved a French municipality (Roanne) engaging a third party developer (SEDL) to acquire land, build a leisure complex including a cinema and commercial premises (to be sold on to a third party) and a car park to be transferred back to the municipality together with various other outputs such as access roads and public spaces. The municipality of Roanne was the instigator and author of the project. The ECJ was asked to determine whether the agreement did in fact involve a public works contract subject to the procurement rules. The ECJ found that as the main purpose was to carry out works corresponding to specified requirements, it was a works contract that needed to be advertised and tendered under the OJEU rules.

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The construction of the leisure centre was to be regarded as corresponding to the requirements of the municipality because taken as a whole the project was intended to reposition and regenerate the local area. This was seen as a warning to local authorities everywhere that if a contract results in the provision of works to (public) order (in excess of the works value threshold of approximately £3.5m), then even if other aims are pursued through the project as well, there is a public works contract subject to the procurement rules which must be advertised accordingly. However, it is important to note (and the OGC stresses this) that the Roanne case did not change the law in any way, it merely brought it to wider attention.

Definition of “a work corresponding to specified requirements”

The OGC observes that the ECJ has yet to give explicit guidance on how exhaustively detailed a specification needs to be.

The OGC offers a view that the specifications set by the contracting authority should be sufficiently detailed and be expressly referred to in the contract such that they may be legally enforceable. In a development agreement context there is a difference between that and a broad invitation to develop in accordance with applicable national or local land-use planning policies, and where the developer is free to put forward its own intentions, proposals and specifications within those parameters.

Thus, the OGC has stated that in its view “*where a contracting authority invites a developer or developers to submit their own proposals for the use or development of land or buildings, (competitively or otherwise) but without itself specifying the requirement, the public procurement rules may not apply, even if the contracting authority selects the winning proposal according to broad criteria pre-determined by the authority*”. This offers considerable flexibility set against the most conservative interpretations of the Roanne case and what is a public works contract, albeit it does not make crystal clear the point at which broad criteria for selection become sufficiently detailed specifications to be legally enforceable. This means that the correct interpretation of what is a public works contract in such cases will continue to warrant a very subjective assessment of fact and degree on a case by case basis.

Land deals and avoiding the procurement rules by expressing desirable outcomes rather than works obligations (Flensburg case)

The EU public procurement regime does not apply to straightforward land transfers with “no strings attached”. A land transaction includes a transfer of a right or interest in land. The procurement regime applies to public works, and indeed services and supplies contracts. Roanne addressed how one characterises a “mixed contract”, ie. a transaction that has elements of land acquisition and/or disposal, and elements of works and/or services. Such contracts are sometimes in the form of a joint venture between the contracting authority and an economic operator, and they often involve the contracting authority imposing requirements on what should be done with land contributed to the venture.

In particular the OGC notes a recent European Commission investigation concerning the German city of Flensburg. The Flensburg case involved the sale of land to a developer for the possible construction of a building that would correspond to certain urban development needs. However, apart from a simple statement of intent, that contract did not contain any legally binding obligation for the developer to construct the building envisaged. Rather, the contract only stipulated a right of buy back of the land in case the building was not constructed.

The Commission has publicly stated in its press release noting the termination of the investigation that this was not a public works contract (nor a concession) because the contract in question did not contain a *legally binding obligation to execute works* on behalf of a contracting authority. The Commission further specifically confirmed that the buy-back right was not a sufficient sanction to create a positive and legally binding obligation to undertake the works.

The OGC states that the Flensburg case is a sound precedent to follow in land development situations and where a contracting authority only sets out general intentions that are not laid out in binding obligations, then the public procurement rules should not apply. The OGC adds that if a developer remained able to change the scope altogether without breaching the contract then again there would be a strong indication that the procurement rules did not apply.

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Legal status of the OGC paper and the Flensburg case

The OGC paper does not have the formal legal value of the EU public procurement Directives, the (UK) Public Contracts Regulations 2006, or related Court judgements in the UK and the ECJ. Similarly, the Flensburg case – which follows as it does a European Commission press release rather than an ECJ judgement – does not have ultimate legal force. However, the OGC is the governmental body entrusted with the monitoring and application of procurement law in the UK, and the European Commission is the body similarly charged with ensuring and enforcing respect for the procurement rules on an EU-wide basis. Neither body expresses a view on such significant issues without thinking very carefully and consulting the leading legal experts available. It may, therefore, be reasonably assumed that this is the best guidance for interested parties available at present.

Other situations identified by the OGC

The OGC also identifies some other typical situations in which questions arise as to whether or not a development agreement includes a public works contract subject to the procurement rules, namely:

- *Development contracts ancillary to a lease*: the OGC notes that a contracting authority leasing property to a developer and charging a rent, while allowing the developer to build to its own requirements, should not constitute a public works contract. The payment of rent is not a pecuniary interest corresponding to specified works requirements in such a case, and this is so even if the development agreement sets out certain limitations to what the developer may do in order to protect the authority's interest as lessor.
- *Building licences*: the OGC observes that on some occasions rather than development agreements involving transfers of (public) land, contracting authorities grant building licences to build subject to various conditions, thus allowing the authority to retain control of the freehold pending satisfactory completion of relevant works. If that licence imposes specified works obligations on the developer it will normally be covered by the procurement rules, but if the licence only contains negative obligations on the developer not to go back on its own pre-determined plans then this should fall short of the specified works obligations necessary to place it within the procurement rules.
- *Mixed developments*: where only a small part of a much wider development situation includes specified works obligations that a contracting authority wishes to impose (eg. a major development which includes the relocation of council offices as one discreet part) then an authority may wish to ring fence and procure the discreet part without the whole development (and associated land transfers) becoming subject to the procurement rules.

On the other hand if the specific circumstances make it practically impossible to make such a separation then the safe approach would be to procure the whole development.

Planning obligations

Since the Roanne judgement there has been a debate as to whether additional planning obligations under UK law flowing from (for example) s.106 or s.278 (highways) agreements might also be covered by the procurement rules. While such obligations may sometimes appear in the same light as pure planning conditions (for example as terms limiting use or specifying mitigation to be carried out by the developer) in some cases they may go much further and stipulate the carrying out of works (eg. highways or schools) that might otherwise be carried out by the authority. The OGC has declined to express a view on this and promises to revert with further guidance in due course.

Impact of the new Remedies Directive

A series of very recently adopted amendments to the Public Contracts Regulations 2006 will take effect on 20 December 2009. These follow the 2007 EC Directive on procurement remedies otherwise known as the new "Remedies Directive". This will be the subject of another detailed briefing shortly but the immediately obvious implication for current purposes is that the new remedy of a Court *declaration of ineffectiveness* will be available for situations where no OJEU advert has been published when it should have been. This is precisely the judgement that is often made in Roanne-type situations, ie. a determination is made that a given development agreement situation falls outside the procurement rules altogether – perhaps because of a "Flensburg" assessment or similar – and so a development proceeds with no OJEU advert at all.

Of course, if that judgement that the procurement rules did not apply is upheld, then no declaration of ineffectiveness will be given. However, the possibility of such a remedy being granted post award of the contract (NB. the existing regime allows for damages only as a remedy post award) will escalate the risk assessment of the original decision as to how safe is the conclusion that the procurement rules did not apply and no advert was required. In such situations further strategic considerations are likely to come into play, such as the publication of voluntary "transparency" or "award" notices" which may publicise the fact that contracts have been awarded without full OJEU process, and briefly set out why. The object of such voluntary publications will be to flush out any potential challenges there and then to limit the availability of potential declarations of ineffectiveness in the future.

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A declaration of ineffectiveness will only have prospective effect, meaning that works entered into already will remain legal, just that further works will be required to stop. If no voluntary transparency or award notices have been published then proceedings to obtain a declaration of ineffectiveness must be commenced no later than six months from the date of entry into force of the contract concerned. In addition, even if a declaration of ineffectiveness is warranted a Court may decline to give it if there are overriding reasons in the general interest.

Conclusions

The OGC sums up noting the following points as indicative of a development agreement situation not being subject to the procurement rules:

- the development is undertaken at the autonomous initiative and instigation of the developer;
- the development agreement is incidental to a transfer or lease of land and only contains protections to the public authority's retained interest in the land;
- the development is based on proposals put forward by the developer rather than specifications set by the authority, even if the proposals were sought by the authority and a winner chosen;
- there is no pecuniary interest (ie. payment in cash or kind) passing from the authority to the developer; and/or
- the development agreement does not contain specified and enforceable obligations, even if the parties may agree some general intentions.

The OGC is at pains to stress that every situation must be assessed in the round and taking into account all relevant facts and agreements, and artificial arrangements with no purpose other than circumvention of the rules are likely to be viewed with suspicion. Given the sensitivity of the area the OGC paper is never a substitute for expert legal opinion applied to all the specific facts of each case.

All in all the OGC commentary offers very useful guidance for what has long been a vexed issue, even after Roanne. This will be helpful in guiding contracting authorities and developers alike in judging when and where the procurement rules bite in future development agreements, and taking balanced risk judgements accordingly. The new Remedies Directive – particularly when taken together with the recent higher incidence of procurement challenges generally – serves merely to highlight further still the importance of getting this right.

Implementation of New Remedies from 20 December 2009

The long-awaited implementing provisions of the 2007 Remedies Directive have now been published, and the Public Contracts (Amendment) Regulations 2009 will enter into force as of 20 December 2009 and essentially cover procurements commenced after that date. This creates a variety of changes to the Public Contracts Regulations 2006, which are all designed to improve public procurement procedures from the specific perspective of bidders' rights.

The primary change is the introduction of a new remedy – a declaration of ineffectiveness – to be available from the court in situations of the perceived worst procurement infringements. This remedy will introduce two major new concepts to public procurement: firstly it will allow (for a limited period of time) contracts that have already been entered into to be knocked down; and, secondly, it will be accompanied by a civil financial penalty (ie. a fine) to be imposed on the procuring authority concerned. These new possibilities are in stark contrast to the prevailing situation in which the only remedy available to a challenger once a contract is in force is damages, and an authority breaching procurement is never liable to any fines for misconduct of procurement. As explained below, the changes look set to make a big difference to the general procurement landscape, and will particularly affect risk assessments and corresponding negotiations with economic operators when it is not absolutely clear whether the procurement rules apply at all, for example in some of the circumstances identified around land transfers, the "Roanne" judgement, and the OGC's recent paper on that.

Other new rules will have an important impact too, such as the automatic suspensive effect that bringing proceedings will have in future in any case where a decision to award has been taken but the contract has not yet been entered into. This will obviate any need to apply for a specific injunction in such a case and will rather put the onus on the procuring authority to apply to the court for a specific order overturning the suspension if it has good grounds to do so. We will now proceed to explain this and the other changes brought about by the new rules in more detail.

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Suspensive effect of bringing proceedings where contract not already entered into

As noted above, the new rules bring about a new requirement for procuring authorities to refrain from entering into a contract where this has not already been done and proceedings have been issued challenging a decision to award to a particular operator based on a breach of the procurement rules. This suspension will only end following a court order or other termination of the proceedings. Previously, an economic operator bringing a challenge against a decision to award had to seek an injunction from the court if it wanted actually to prevent the contract from being entered into pending resolution of the main proceedings. This was an important consideration if, as has been the case, the only remedy once a contract has been entered into is damages. Seeking injunctions is costly and uncertain, which therefore dissuades parties from seeking them. General rules of law provide that injunctions are only available provided it is found that:

- (i) there is a serious issue to be tried;
- (ii) that damages may not be an adequate remedy for any interference with either party's rights which may have occurred; and
- (iii) the balance of convenience does not favour granting the injunction sought.

The new rules remove the need for a challenger to apply for an injunction and effectively places the burden on the procuring authority concerned to obtain an order waiving suspension, if it specifically wishes to enter into the contract immediately, notwithstanding the challenge (for example because the challenge is considered without merit and the contract is urgent). Effectively now, in obtaining an order waiving the suspension, procuring authorities will need to address similar considerations to stop the suspension, as a bidder would need to address previously to get an injunction, but in reverse. This places the burden firmly on the procuring authority rather than the other way round. This issue alone is expected to swing the balance of power in procurement challenges considerably towards the challenging bidder(s).

Grounds for a "declaration of ineffectiveness"

The new remedy (the meaning of which is considered below) will be available in three categories of situation:

- a regulated public contract has been awarded without prior publication (in the OJEU) of a contract notice when the same was required by the Regulations;
- a contract has been awarded in breach of the mandatory standstill period between publicising an award decision to losing tenderers and entering into the contract concerned; a breach of the suspension conferred on a decision to award by a challenger issuing proceedings; or breach of an interim court order modifying or restoring a suspension; or
- an individual contract based on a framework agreement or dynamic purchasing system (DPS) is awarded in breach of the terms of the framework or DPS which required a mini-competition and where the contract in question exceeds the value of the normally applicable value thresholds. However, if the authority has notified all parties in the framework or DPS of the decision to award and respected the standstill period between that notice and entering into the contract, then ineffectiveness will not be available.

The new remedy will put a far greater emphasis on procurement compliance generally, but the most obvious area of likely impact will be in the first situation above, where a public contract is awarded following no OJEU advert at all. This is a particularly vexed issue in situations of purported public land transfers that incorporate elements of works to be carried out to the relevant authority's specifications. This is the centre of the notorious Roanne judgement and the area recently analysed in the OGC's November 2009 paper as addressed in the first article. Suffice to say that judgements in this area can be quite subjective and concern large development projects. When a potential remedy of ineffectiveness is available after entering into large contracts this will inevitably exercise both the procuring authority's and developer's minds even more carefully when proceeding with projects that have not been subject to prior OJEU advertisement, and specifically when negotiating the detail of the contract(s) concerned.

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What will a declaration of ineffectiveness mean in practice?

The practical effect of a declaration of ineffectiveness will be that the contract concerned will be ineffective going forwards, but not retrospectively. In other words, all work done and carried out under the contract up to the date of the declaration of ineffectiveness remains valid and legally enforceable, but obligations to carry out future works, services and/ or supplies will stop. In such situations when the relevant procuring authorities have remaining works, services or supplies to carry out they will need to consider re-tendering.

When a court gives a declaration of ineffectiveness it may also give any other orders it sees fit to implement the same. One can imagine there will be a host of issues to resolve in order to sort out the situation created. However, the new law emphasises that the court should respect any agreement the parties may have already anticipated as to how to deal with it, provided such agreement does not contradict the object of the remedy in the first place, which is to stop the contract going forwards. This means there will be an incentive for parties concluding contracts running a risk of ineffectiveness to agree separation and/or indemnity provisions to cater for that future possibility, should it arise. It remains to be seen how such provisions will take shape and much will depend on the negotiating positions of the respective parties in each case, but one may reasonably suspect a developer taking such a risk in a major project will want to be covered in terms of how ineffectiveness will play out should it arise.

Avoiding the potential for a declaration of ineffectiveness – publish a voluntary transparency notice

One method of avoiding the availability of the new remedy in the first situation where there has been no prior OJEU advertisement is to publish a new “voluntary transparency notice” before entering into the contract, and waiting at least 10 days from the day after such publication (in the OJEU) before entering into the contract. A voluntary transparency notice of this nature must contain the basic details of the contract concerned (awarding authority, successful contractor, description of contract) but, most importantly, must state the justification for not having published an original OJEU advert originally. This notice will act as a means of flushing out potential challengers before entering into the contract, and if done properly will mean the declaration of ineffectiveness remedy will not be available in that case.

However, publishing such a notice puts the matter in the public domain, which is obviously a risk in any sensitive scenario, and may prove to invite spurious requests for information and/ or spoiling tactics from rivals, regardless of the merits of any challenge.

Within what time scales must a declaration of ineffectiveness be sought?

An interested party seeking a declaration of ineffectiveness in respect of a particular contract must bring proceedings to obtain it no later than six months from the day after the contract was entered into, or 30 days from the day after an award notice is published in the OJEU, provided the award concerns a contract for which no original OJEU advert was published and the award notice has included a justification of why that was the case. As with the publication of a voluntary transparency notice, publishing a proper award notice giving the reasons why no original OJEU advert was published is another means of limiting the availability of the declaration of ineffectiveness. Both of these notices may prove useful in parties limiting their risk in these situations in future.

As an alternative to general publication of reasons why no original OJEU advert was issued, if a contracting authority is aware of a particular entity as a potential challenger it may alternatively write to that party individually to explain the decision to award and the reasons for no original advert, and such a communication will have the same effect (ie. implement a 30 days only challenge period) vis-à-vis that particular operator.

Exceptions from the duty to grant a declaration of ineffectiveness – overriding general interest

A court may refrain from granting a declaration of ineffectiveness where it is satisfied that there are overriding reasons in the general interest that justify not granting it, even though the criteria for such a declaration are met. It remains to be seen what may qualify as such overriding general interest reasons but one may reasonably assume that issues concerning (for example) emergencies to public amenities, where it is time critical that works be completed as quickly as possible for the benefit of the public at large, may qualify in this way.

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The new law is careful to direct, however, that economic inconvenience will need to be exceptional to qualify as a general interest reason not to declare a contract ineffective, and in this context the new law expressly rules out such economic impacts as costs resulting from delays in the contract, retendering costs, costs of legal obligations arising from ineffectiveness, and costs resulting from changing the economic operator doing the job.

Whenever a contract is declared ineffective there will inevitably be a host of costs like these arising in order to rectify the situation. Some of these may be suffered by the contracting authority concerned, and some by the economic operator whose contract has been cut short. As noted above, the court may make additional orders as to the sharing of the burden of those costs between the parties, particularly to the extent the parties have not already covered this off in the contract itself previously. However, the main point for general interest purposes is to note that the severity of the economic fall-out associated with a declaration of ineffectiveness will normally not be a sufficient basis to persuade a court to refrain from declaring ineffectiveness to begin with.

Civil financial penalties and other liabilities in addition to or instead of a declaration of ineffectiveness

Another major innovation is that when the circumstances for a declaration of ineffectiveness are met, the court must also impose a civil financial penalty on the awarding authority concerned, even if general interest considerations have led the court not to impose the declaration of ineffectiveness. It is not yet known what levels such fines may be at, save that the court must ensure that the penalty is effective, proportionate and dissuasive. This implies a punitive element, in other words making an example of offending authorities in order to dissuade future breaches, but also means that there must be at least some relationship between the fine and the size of the contract in question. The court is also directed to take into account the seriousness of the breach (eg. how flagrant is it, or it is an understandable grey area), the behaviour of the contracting authority (eg. has it acted transparently and reasonably in all the circumstances), and, in case an immediate declaration of ineffectiveness is not given, the extent to which the contract has been allowed to continue. One might reasonably expect following the comments issued in the recent *Amaryllis* case – where the procuring authority was roundly criticised for consistently failing to give adequate explanation to a losing bidder as to why a competing bid was chosen – that similar behaviour in a declaration of ineffectiveness scenario might be considered aggravating factors leading towards a heavier fine.

If general interest reasons are used to justify not granting an immediate declaration of ineffectiveness, the court must consider ordering that the contract at least be shortened. One can envisage a scenario when reasons in the general interest justify, for example, that the phase of development already underway be finished rather than abandoned mid-stream, but that the remaining phases of the contract be terminated and re-tendered. In a contract shortening situation the court should similarly respect any prior agreement between the parties as to addressing the consequences of such an order provided it does not work directly against the objective of the overall remedy.

Transitional provisions – how do the new rules affect contracts that are already in contemplation but not in force as at 20 December 2009?

Nothing in the new rules shall affect a contract award procedure commenced before 20 December 2009, which includes:

- a contract notice having already been sent to OJEU;
- the procuring authority having published any other sort of advert seeking offers or expressions of interest in relation to a public contract; or
- the procuring authority having already contacted one or more economic operators directly in order to seek expressions of interest or offers in respect of a proposed public contract, or the authority has responded to unsolicited expressions of interest.

This means that if negotiations are already clearly underway before 20 December 2009 in relation to a proposed public contract then the new remedy of declaration of ineffectiveness shall not be available for it. This has prevented any “mad rush” to sign up to contracts prior to 20 December in order to avoid the new remedies, but it will probably mean that some invitations for expressions of interest or offers might be expedited with this date in mind in situations where the future availability of the new remedies might otherwise be a concern. One might reasonably expect there to be some difficult questions of evidence as to whether the procurement process for a particular contract essentially began before 20 December 2009 or not, in case a future challenge should concern a contract for which the initial activity happened on or around that time.

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Other new rules – clarifying standstill provisions and communications to losing parties

The new rules also expand upon the existing provisions of the Public Contracts Regulations 2006 for how the standstill obligations deriving from the Alcatel case are to be determined. Standstill periods must in future always end at midnight on a working day. If the 10 or 15 day standstill period (depending on use of electronic communications) would normally end on a non-working day they must automatically be extended until the next available working day. Given that breach of standstill periods will now be an issue justifying a declaration of ineffectiveness we anticipate that even greater care will be taken by procuring authorities in future to be absolutely sure that no chances are taken in this respect. Indeed, successful bidders are likely to want to stipulate this in their contracts and be indemnified should the procuring authority make a needless mistake on this point.

Another clarification of the existing rules lies in what must be said in the notice to be given to losing bidders when a decision to award is taken and the fact of this decision is communicated to losing bidders in order to start the standstill period running (ie. before the contract may be entered into). The new Regulation 32(2) requires that in such communications it must be stated:

(i) what were the award criteria (and any sub-division thereof in accordance with *Letting v Newham*);

(ii) what were the reasons for the decision, including the characteristics and relative advantages of the winning bid and the scores obtained (if any) of the individual party receiving the notice and the winner of the contract or the party being awarded the framework;

(iii) the identity of the economic operator being awarded the contract or framework; and

(iv) a precise statement of the standstill period and how the timing of its end may be effected by any (and if so what) contingencies, explaining the period within which the procuring authority will refrain from entering into the contract concerned. It was not clear in the existing rules that an explanation of the relative characteristics of the winning bid against the individual loser concerned had to be given. This created a degree of uncertainty as to what was the full extent of the duty to give reasons to losing bidders. The *Amaryllis* case clarified that full explanations had to be given in order to allow losing bidders to assess their legal rights, and failure to do so might extend the time limit within which a challenge must be brought.

The new rules eliminate some of the previous uncertainty by making much more plain what communications to losing bidders must say at a minimum.

A further area of clarification lies in what must be said to parties that do not qualify for a second stage of procurement process through, for example, failure to be selected for invitation to competitive dialogue or to tender in a restricted procedure. Parties excluded at this point never submit a formal bid, but still have rights in relation to the decision to exclude them, which must be communicated to them. There is no similar obligation to explain relative advantages of the other parties at that stage as clearly it is too early to say and as yet there is no winner. Whilst the new Regulations do not say so explicitly the general principle of transparency (and common sense) implies that communications to excluded parties must at least explain why they were so excluded, such as to enable them to pursue the matter if they feel the decision is unjust.

Concluding remarks

All of the above new rules are designed to make it easier for a bidder to enforce its rights during public procurement processes. They all increase the breadth of availability and ease of access to remedies in the event that bidders are aggrieved at decisions taken. The intended consequence of this is not just that there are better bidder remedies, but precisely because there are better remedies, procuring authorities will take more care to observe the rules to the letter in the first place to avoid challenges. This will surely be good news for bidders generally but many procuring authorities are likely to be increasingly frustrated with the extra resource required to be more careful in procurement compliance, which is capable of eating away at the efficiencies an open procurement process is supposed to achieve. 2010 is surely going to be a very interesting year as procuring authorities and bidders alike get used to these new rules.