

Working collaboratively – understanding the procurement law issues

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Andrew Daly, Partner

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Objectives of this session

- The consequences of being challenged
- Effectively dealing with initial challenges from suppliers – tactical approaches
- Managing risks at key stages

Our experiences

- Act for both Claimant and Defendant
- Consequences
 - Time
 - Costs
 - Internal
 - Legal
 - Reputation

Remedies

- Automatic suspension
- Damages
- Set aside
- Ineffectiveness

Empirical study

- Low level of procurement litigation in UK
- Do suppliers perceive breaches?
- Costs of litigation
- Fear of reprisals
- Courts approach to interim relief

.... So if you are a supplier

Supplier considerations

- What do they want to achieve?
- What are the potential costs?
- Lack of information
- Ineffectiveness unlikely, damages difficult to obtain and so utilise automatic suspension
- Pressure on standstill period
- Political pressure?
- NHS remedies?

Considerations for contracting authorities

- Prepare to be challenged
- Concentrate on evaluation and debrief
- Seek to stay on the front foot
- Avoid allegations relating to lack of information
- Dealing with challenge letters
 - Request for information?
 - Extension to standstill period?
- Risk assessment

Tactical approaches - supplier

- How do you approach the contracting authority?
 - Formal
 - Informal
 - Legal
- TCC guidance note
- Timing
- Limitation

Tactical approaches – contracting authority

- Options when responding
- Timing
- Extend standstill period
- Lawyers?
- TCC Guidance note

Key areas of risk (1)

- Specification
 - Compliance with
 - Drafting of
- Disclosure of evaluation criteria
- Manifest error
- Level of debrief

Key areas of risk (2)

- Limitation arguments
- Framework agreements
- Material variation

Less common risks

- Regulation 84 reports
- Regulation 53 disclosure of documents

Any questions?

Andrew Daly

a.daly@hempsons.co.uk

01423 724015

07748 982185

www.hempsons.co.uk

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