

## **“Caution” is now the watchword when it comes to directly awarding public sectors contracts**

The judicial review proceedings brought by the Good Law Project against the Department of Health and Social Care in relation to the £108m contract the Department awarded for PPE in April are about to shine a light on Regulation 32(2)(c) of the Public Contracts Regulations 2015.

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Most, if not all, contracting authorities will be familiar with the Regulations and will know that there are limited circumstances in which those contracts which are equal to or exceed the relevant threshold can be awarded without the opportunity being advertised and a competitive process being held. One of those prescribed circumstances is when there are reasons of extreme urgency brought about by events unforeseeable by and not attributable to the awarding authority. It is also a requirement that the relevant time frame for a competitive procedure cannot be complied with.

It is likely that Regulation 32(2)(c) has been relied on by many contracting authorities during the Pandemic to justify direct contract awards but it now seems the Courts will be required to consider for just how long the Regulation 32(2)(c) justification can be relied on in circumstances such as these as well as the duration of contracts that can be awarded in this manner.

The impact of any ruling could have a significant impact on a contracting authority's discretion to directly award contracts in reliance on Regulation 32(2)(c) and is one we would recommend procurement officers and professionals are sighted on.

There is, of course, a further interesting factor in this case and that is that due to the proceedings being brought by way of judicial review rather than an action for breach of the Regulations it will fall to the Administrative Courts to hear this matter should it proceed and not the TCC which is the forum for the majority of procurement law disputes. It remains to be seen whether the forum in which this matter could be heard will have an impact on any subsequent ruling.

However, for now, what is clear is that a good three months into this Pandemic contracting authorities would be well advised to carefully consider their position before awarding contracts to support their response to/address the Pandemic in reliance on Regulation 32(2)(c).

## **Contact**

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