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Procurement Update

19 October 2021

Tiffany Cloynes, Clare Hardy

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presentation**

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Agenda

- Procurement Policy Note 06/21
- Expert Evidence
- Automatic Suspension
- Distinguishing between selection criteria and contract award
- Replacement of entities subject to exclusion grounds

Procurement Policy Note 06/21

- *Taking account of Carbon Reduction Plans in the procurement of major government contracts*
- Came into force 30 September 2021
- Applies to central government contracts
- Requires bidders to provide carbon reduction plan
- Does not apply if irrelevant or disproportionate

Case Law – Expert Evidence

- *Bop-Me Ltd v Secretary of State for Health and Social Care* 2021 [EWHC] 1817
- Expert evidence allowed to enable court to make a decision on a matter outside its knowledge

Case Law – Expert Evidence

- *R (on the application of Good Law Project) v Minister for the Cabinet Office* [2021] EWHC 2091
- Expert evidence not admitted
 - No recognised body of expertise
 - Evidence not relevant to issues to be decided
 - Evidence not reasonably necessary for determination of issues

Case Law – Automatic Suspension

- *Draeger Safety UK Limited v London Fire Commissioner* [2021] EWHC 2221
- Impact on public safety balanced against availability of expedited trial
- Automatic suspension maintained

Quantities under a framework agreement

- *Simonsen & Weel A/S v Region Nordjylland (C-23/20)*
- Principles of equal treatment and transparency require contracting authority to state maximum quantity or value of requirements to be procured under a framework

Distinguishing between selection criteria and contract conditions

- *Sanresa UAB v Aplinkos apsaugos departamentas prie Aplinkos ministerijos (C-295/20)*
- Authorisation for international shipment of waste a contract condition, not a selection criterion
- Tenderer may wait to be awarded a contract before showing it meets conditions for performance of the contract

Replacement of entities subject to exclusion grounds

- *Rad Service Srl Unipersonale v Del Debbio SpA (C-210/20)*
- Tenderer excluded because of exclusion ground affecting ancillary undertaking
- Tenderer should be given the opportunity to replace the entity if exclusion ground unknown to tenderer through no fault of the tenderer

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Tiffany Cloynes

Partner

+44 (0)1332 378 302
tiffany.cloynes@geldards.com



Clare Hardy

Senior Associate

+44 (0)29 2039 1766
clare.hardy@geldards.com

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Thank You

www.geldards.com
info@geldards.com