

Neutral Vendors

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The question

What is the legality of a "framework within a framework"/neutral vendor types of procurement?

They are proliferating, but are they legal?

Coverage

- What is a neutral vendor (NV)?
- The current law
- The Procurement Bill
- The answer / Q+A

What is an NV?

- NVs are managed service providers facilitating contract award between contracting authorities and pre-qualified professional services providers
- Different rules for different NVS e.g below threshold only
- Designed to promote quick delivery
- Often provide the ability to direct award or to run a mini-competition depending upon requirements

Current law

- **Public Contracts Regulations 2015 (PCR)**
- No specific provisions on NVs/ frameworks within a framework
- Regulation 33 allows for use of multi-supplier frameworks
- Regulation 18 principles must be upheld

What is safe?

- Public bodies buying for another (central purchasing) (reg 37 PCR)
- Ad hoc central purchasing (reg 38 PCR)
- Piggybacking on another's procurement if scope/documents allow (reg 72)
- Teckal and Hamburg collaborations (reg 12)

What is risky?

- Direct award of public contract without procurement
- Private sector set up frameworks for CAs to use (see PPN)
- Material change to existing procurement outside of reg 72
- Above threshold contracts through NV if no market testing of supplier

How do neutral vendors fit in?

- Procurement process appoints NV
- NV then awards contracts to end supplier
- Sometimes NV has approved lists
- Contract typically (not always) between CA and NV
- NV then awards services contract

How do neutral vendors fit in?

- No award of a public contract to actual supplier
- An NV isn't:
 - a framework agreement under reg 33 PCR
 - central purchasing under reg 37 PCR
 - ad hoc central purchasing under reg 38 PCR
- No market testing of quality or price of end supplier (see reg 33 and reg 37 – framework must be between supplier and CA)
- No direct contractual enforceability between CA and supplier
- How to show VFM?

The horizon

- Nothing on NVs in Procurement Bill
- Open frameworks envisage successive usage for same CAs and same scope of work
- No procurement challenges yet on NV use

Considerations for CAs

- Compliance with PCR sits with CA
- Any framework you seek to rely on must be available for your use
- What level of competition is applied by NVs?
- Is NV use in line with your internal policies?

The answer

- A fact specific assessment
- Lots of ways to purchase jointly
- Lack of case law on how PCR apply to neutral vendor frameworks – legal grey area depending on interpretation
- Lower value services contracts more defensible?

Q&A

440

Partners

1,800

Lawyers

4,000

Total staff

2,500

Legal professionals

50+

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