

The CIPFA Procurement & Commissioning Network

Complex Procurements – Understanding Development Agreements, Framework Agreements & Concession Contracts Regulations 2016 1 May 2019 (Leeds) & 2 May 2019 (London)

This new series of practitioner workshops from the CIPFA Procurement & Commissioning will take a detailed look at complex procurement issues, which requires an update following recent case-law, which has updated or clarified the legal position. Entering into development agreements has always been a minefield for CAs and developers and the recent CA case will undoubtedly create uncertainty for existing agreement and future projects. The case is also an important reminder, as it marks the first use of the ineffectiveness remedy by an English Court which may encourage further use by the Court of the remedy in the future. A recent ECJ case has also provided much needed clarity on the use of framework Agreements, which suggests that CAs must state the maximum value requirements at the start of the process, and once this limit has been reached, no further call-offs will be possible. Finally, as CAs enter in partnerships with private companies to exploit commercial opportunities, a reminder of the need to carefully consider the terms of any potential concession opportunity, otherwise face the same draconian penalty as in development agreements.

09.30 – 10.00	Registration and Refreshments
10.00 – 10.05	Welcome, Introductions and Overview of the Day
10.05 – 11.25	<p>Public Procurement and Development Agreements</p> <p>The recent case of R (Faraday) v West Berkshire Council [2018] EWCA has important implications for local authorities and developers alike, who must consider very carefully the lawfulness of any development agreement they make. This session will cover:</p> <ul style="list-style-type: none"> ▪ What is a works contract? ▪ Update on case-law in this area ▪ Flensburg principle – is there an obligation to build? ▪ Including contingencies in your agreement ▪ Extent of exempt land transactions ▪ Entirety of a transaction ▪ How to structure a development agreement to fall outside PCR15 ▪ Importance of careful drafting of VEAT notices ▪ Impact of the decision on your regeneration scheme ▪ What about Section 106 Agreements
11.25 – 11.40	Refreshments
11.40 – 12.40	<p>Procuring Development Agreements - Competitive Dialogue & Competitive Procedure with Negotiation</p> <p>This session will offer delegates a practical explanation of the grounds for the use of the Competitive Dialogue and Competitive Procedure with Negotiation. It will cover:</p> <ul style="list-style-type: none"> ▪ The pre-requisites of entering into a competitive dialogue or a negotiated Procedure ▪ Key differences between CD/ CPwN and IP ▪ Importance of planning, preparation and market consultation ▪ The key principles: Equal treatment and transparency ▪ What is the default procedure? ▪ Examples of projects where each can be applied <p>Procurement documents and tender rules under CD/ CPwN</p>
12.40 – 13.30	Lunch

13.30 – 14.30	<p>Are your Framework Agreements Legal?</p> <p>The ECJ has confirmed in a recent Case C-216/17, that CAs can utilise FAs even if they are not direct signatory to the relevant FA. However it has clarified some very important points, which could seriously question how CAs make use of FAs. This session will cover:</p> <ul style="list-style-type: none"> ▪ Establishing FAs under PCR15 ▪ Which authorities can use a multi-user agreement ▪ Do potential beneficiaries of FAs have to give express consent and, or estimate of the likely volume of purchases? ▪ Obligation to state total quantity of services which the subsequent call-offs contracts might comprise ▪ Complying with the terms of the framework – single supplier & selection within multi-partner frameworks ▪ What methods you cannot apply to make call-offs ▪ Award decision and standstill obligations
14.30 – 14.40	Refreshments
14.40 – 15.25	<p>When should Concession Contracts be Advertised?</p> <p>The Concession Contracts Regulations 2016 regulate the process for concession contracts procurement by CAs. With budgetary pressure making more and more CAs consider income generating opportunities, the recent case of Ocean Outdoor UK Limited v LB of Hammersmith and Fulham is an important reminder of the need to refresh understanding of CCRs. This session will cover:</p> <ul style="list-style-type: none"> ▪ What are concession contracts and what is regulated? ▪ Exclusion for land transactions ▪ The public benefit test ▪ Enforceable obligations placed on the contractor ▪ How to calculate value of concession? ▪ Light touch under CCR ▪ Concession exemption for joint ventures and public cooperation ▪ Electronic availability of concession documents
15.20 – 15.30	Summary and Close

How will you benefit?

This workshop will offer you:

- Directions on how CAs can respond and structure Development Agreements in light of recent case law
- Opportunity to verify whether you are setting up or using Framework Agreement's correctly
- Get clarification on the use of the Competitive Dialogue Procedures
- A practical insight into entering commercial agreements under the CCR16, without the risk of major fines and what should go in your VEAT Notices.

Bookings

Please book early to avoid disappointment: www.cipfa.org/procurement

Members of the CPCN can attend the workshops for free using pre-paid places. Please enquire about membership by contacting Mohamed Hans.

Enquiries

If you have any questions regarding the programme, please do not hesitate to contact Mohamed Hans: **E:** Mohamed.Hans@cipfa.org **M:** 07717 345188. If you have any questions about bookings, please do not hesitate to contact Jennifer Walton: **E:** Jennifer.walton@cipfa.org **T:** 01244 394629

CIPFA Sustainability Policy

CIPFA is delivering all of our training courses, workshops and seminars in accordance with our sustainability strategy. We do not provide hardcopy course materials to delegates and these are now distributed by email. We are striving to reduce our carbon footprint in every way that we can, and we hope that we can count on your support.