



UK Framework Agreements & Bird & Bird

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The mission today

Background

A little history can often be useful

Issues in setting up frameworks

Is a framework agreement appropriate

Agreements and contracts, is there consideration?

Quantities, scope

Who can use the framework (UK Guidance)

History (and a little heresy)

Prior to joining the common market in 1973, the UK had no procurement rules to speak of and so the public procurement rules are often still referred to as the EU procurement rules. So no real displacement of national law or awkward application of national and EU rules (this comes later...)

The UK's choice of courts to hear procurement challenges (UK High Court/Court of Session in Scotland) sets access to justice at high levels of costs (court fees and professional legal costs are very high) and contribute in no small way to the relatively low level of legal challenges.

UK domestic competition law (based largely on EU law TFEU Articles 101 and 102) was adopted in 1998 with the UK Competition Act.

Why so many frameworks ?

Historically – UK reluctance to use open procedure (preference for restricted/negotiated)

Latham (1994) and Egan (1998) reports led to an increased focus on the use of partnering

UK government drives efficiency and cost saving through standardisation and aggregation. From 2008, austerity plays its part.

Utilities using frameworks (and qualifications systems) but not cleared for public sector until 2004

Frameworks seen as a continuation of the preference for partnerships

Particular issues

Frameworks ≠ magic solution

Suitability	More difficult to use works frameworks than supplies or services
Who can use? A wild west of frameworks?	Clarification from UK government Distinguishing FA and FC Reliance on existing frameworks to circumvent procurement timelines/risks – even where contracts wholly or partially inappropriate to needs
SMEs	Concern that frameworks only for large suppliers, limiting market suppliers, new entrants and potentially reducing competition
Aggregation	Quantification/estimations Leads to SME exclusion? Distortion of competition? What happens if framework substantially in excess of original estimate

Thank you & Bird & Bird