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New Higher Procurement Threshold Values to Apply Across Europe from 1 January 2014

From 1 January 2014, the threshold values that trigger the need for a regulated public procurement exercise across Europe have been increased. However, because of the movement in the £/€ exchange rate in the past two years, the equivalent values in pounds sterling for UK-originated procurements have fallen.

What is the development?


Why is this development important?

Under the EU public procurement rules, all requirements leading to a contract awarded by a public or government body – including utilities – must follow openly advertised tendering and contract award procedures, and comply with principles of transparency, fairness and equality. A number of exceptions exist, among which is that the rules only apply to requirements above a certain financial threshold: i.e., small contracts are not required to follow the same rules.

The European Commission updates the Europe-wide threshold values every two years in order to make sure that they are consistent with the thresholds under the World Trade Organisation’s Government Procurement Agreement. During the latest biennial review, the thresholds have been increased – although not by much.

The Regulation has a direct effect in all EU Member States, and all EU Member States will have to apply the new threshold values to their national procurement rules.

The Regulation prescribes the new threshold values in terms of Euros, and a separate communication from the European Commission sets out how these new values should be translated into local currencies in EU Member States (such as the UK) that have not converted to Euros. The pound sterling values are slightly lower than the last issued threshold values, published two years ago.

The new threshold values that apply from 1 January 2014 are set out below.

Non-Utilities Procurement

For contracting authorities and other regulated bodies whose activities do not fall within the utilities sector (e.g., central government departments/agencies and local authorities), the new threshold (exclusive of VAT) will, generally speaking, be:

- €134,000 (or £111,676) for supply and services contracts, as well as design contests, to be awarded by central government departments and agencies, excluding the following contracts:
  - contracts for the provision of research and development services;¹
  - contracts for certain telecommunication services;²

¹ These are services that fall within Category 8 of ‘Part A’ services listed in Schedule 3 to the Public Contracts Regulations 2006 (which reflects Annex II A of Directive 2004/18/EC).

- contracts for the provision of so-called ‘Part B’ services; 3
  in respect of which the applicable threshold will be €207,000 (or £172,514);

- €207,000 (or £172,514) for supply and services contracts, as well as design contests, to be awarded by contracting authorities other than central government departments and agencies (e.g., local authorities); and

- €5,186,000 (or £4,322,012) for works contracts to be awarded by any contracting authority.

In respect of subsidised contracts, the threshold will become:

- €5,186,000 (or £4,322,012) for contracts for major civil engineering projects and the construction of hospitals, schools, universities and other public buildings, where the works are subsidised directly by contracting authorities by more than 50%; and

- €207,000 (or £172,514) for services contracts that are subsidised directly by contracting authorities by more than 50% (to the extent such services contracts relate to contracts for major civil engineering projects or the construction of hospitals, schools, universities and other public buildings that are also directly subsidised by contracting authorities by more than 50%).

Where a contracting authority enters into multiple contracts to cover a single requirement, the Euro-value of the threshold applicable to each lot is unaffected by the Regulation and will remain at:

- €80,000 (or £66,672) for each lot of a supply and services contract; and

- €1,000,000 (or £833,400) for each lot of a works contract.

Note that separate thresholds continue to apply to procurement of goods and services by the Ministry of Defence. In relation to supply and service contracts in the Defence and Security sector, the new threshold is €414,000; and €5,186,000 for the procurement of works.

Utilities Procurement

For contracting authorities and other regulated bodies that pursue activities in the utilities sector (e.g., operators of gas/electricity distribution networks and operators of public transport services), the new threshold (exclusive of VAT) will, generally speaking, be:

- €414,000 (or £345,028) in respect of supply and services contracts as well as design contests organised as part of procurement for services; and

- €5,186,000 (or £4,322,012) in respect of works contracts.

Where multiple contracts are awarded to cover a single requirement, the Euro-value of the threshold applicable to each lot is unaffected by the Regulation and will remain at:

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2 These are services that fall within Category 5 of ‘Part A’ services listed in Schedule 3 to the Public Contracts Regulations 2006 and have CPV codes that are the equivalent of CPC references 7524, 7525, and 7526.

3 These are services that fall within ‘Part B’ services listed in Schedule 3 to the Public Contracts Regulations 2006 (which reflects Annex II B of Directive 2004/18/EC).

4 These are entities not listed in Schedule 1 to the Public Contracts Regulations 2006 (which reflects Annex IV to Directive 2004/18/EC).

- €80,000 (or £66,672) for each lot of a supply and services contract; and
- €1,000,000 (or £833,400) for each lot of a works contract.

Note that separate thresholds will continue to apply to planned procurements to be included in periodic indicative notices; these thresholds are only partly amended by the new rules and are now €750,000 for supplies and services, and €5,186,000 for works.

Morrison & Foerster

December 2013
New European Procurement Directives

European Union Overhauls the EU Public Contract Procurement Regime

On 11 February 2014, the EU took the final step in its latest overhaul of its public procurement regime. As well as a new directive dealing for the first time with the award of concession contracts, the EU has issued new directives that consolidate and update the existing regimes dealing with the award of contracts for supplies, services or works, and the award of contracts in the so-called utilities sectors (water, energy, transport and postal services).

Introduction

The new directives have been a long time coming. The Commission originally proposed its changes a couple of years ago but the proposals have been through prolonged consideration under the EU’s legislative procedure. The Commission’s aim is to modernise the European public contract procurement rules and make them simpler and more flexible. In practice, it is perhaps questionable whether simplification has been achieved, although several aspects are either completely new or have been materially amended from the current regime.

The Council formally adopted the legislative package on 11 February 2014, and the changes are expected to come into force in March 2014. The EU member states have 24 months to implement the changes into national law.

The reforms are contained in three new directives, two of which replace the existing regime and one of which is a partial consolidation and partial extension of the existing European laws on concession contracts. The directives are:

- a replacement of Directive 2004/18 on the procedures for the award of public supply, public service and public works contracts – the Public Procurement Directive;
- a replacement of Directive 2004/17 dealing with procurement by entities operating in the water, energy, transport and postal services sectors – the Utilities Directive; and
- a directive on the award of concession contracts – the Concession Contracts Directive.

We will publish a separate article in the European Procurement and Government Contracts Digest about the Concession Contracts Directive. What follows is a summary of the key changes introduced by the Public Procurement Directive and the Utilities Directive. In this article, we focus on the Public Procurement Directive, although the changes are tracked for the utilities sector by the Utilities Directive.

Contract Award Criteria

Under the current rules, EU contracting authorities can choose whether to base their proposed contract awards based on the lowest cost or the “most economically advantageous tender” (MEAT). In future, only the second of these tests will be available – best value for money, by any other name. The change to MEAT allows a broader focus on life-cycle costs.

The Commission believes that this will enable authorities to put more emphasis on quality, environmental considerations, social aspects and innovation, while still taking into account the price and life-cycle costs of what is being procured. The Public Procurement Directive contains a non-exhaustive list of possible award criteria which could be used to determine the best price-quality ratio, together with (interestingly) a provision setting out the approach to life-cycle costing.

According to the Commission, “The new criteria will put an end to the dictatorship of the lowest price and once again make quality the central issue.” This seems to be a strange view because MEAT isn’t new – it already existed under the old rules and all the Commission has done is remove “lowest cost” as
an alternative. But there’s nothing stopping a public entity assessing the available sub-criteria which together might comprise a MEAT assessment and concluding that price is the dominant factor. Unless the global economy changes dramatically in the near future, social value and environmental considerations will remain minority issues in most EU procurement processes.

So, of course, the real issue will remain how any given public authority plans to assess which bid represents the most economically advantageous tender and how the different aspects of cost, quality and other commercial factors are taken into account and assessed on a transparent basis.

**Award Procedures – More Negotiation**

Under the existing rules, a number of different types of contract award procedures have been allowed, including the open, restricted and negotiated procedures as well as competitive dialogue. Each of these has its own uses and allows for different levels of engagement and discussion with bidders.

Broadly, the existing procedures will remain in place. However, the Commission believes that there is a great need for contracting authorities to have additional flexibility to choose procurement procedures that allow for negotiations. It thinks that a greater use of those procedures is also likely to increase cross-border trade because its analysis has shown that contracts awarded by negotiated procedures have a particularly high success rate for cross-border tenders.

So, in future, the ability to award contracts on the basis of the negotiated procedures will be allowed in a broader range of situations, thus aligning more closely with the competitive dialogue procedure which has been particularly promoted by a number of EU governments, including the United Kingdom.

**New Award Procedure for Innovative Products**

The Public Procurement Directive creates a new concept of “innovation partnership procedure” which is intended to allow the development and delivery of an innovative product or service and the subsequent purchase of items that result from that work. This enables contracting authorities to identify the need for a particular type of product that cannot be met at the moment by solutions already available in the market place.

The Commission’s aim is that this specific procedure should allow contracting authorities to establish a long-term innovation partnership for the development and subsequent purchase of new, innovative products or services that can be delivered at agreed performance levels and costs, without the need for separate procurement procedures for the development and subsequent purchase. Contracting authorities may choose to set up innovation partnerships with one partner or with several partners conducting separate research and development activities.

**European Single Procurement Document**

The EU proposes a European Single Procurement Document (ESPD) which is intended to simplify procedures for bidders.

Many bidders, including small and medium-sized enterprises (SMEs), find that a major obstacle to their participation in the EU public procurement process consists of administrative burdens deriving from the need to produce a substantial number of certificates or other documents related to exclusion and selection criteria. Limiting such requirements, for example, through the use of an ESPD consisting of an updated self-declaration, could result in considerable simplification to the benefit of both contracting authorities and bidders.

At the time of submission of requests to participate on tenders, contracting authorities will be required to accept a completed ESPD from each bidder as *prima facie* evidence of satisfaction of the core bidder selection criteria and confirmation they do not fall within any of the mandatory grounds for exclusion. Subsequently, only the winning bidder will have to submit formal evidence to verify the information
provided in the ESPD. Obviously, this will reduce bid costs for the majority of the bidders in most procedures.

**Types of Services**

The Public Procurement Directive abolishes the current distinction between Part A services (which have hitherto been subject to the full rules) and Part B services (subject to limited procedural requirements).

But the trade-off is that there will be a new simplified light-touch regime for certain types of social, educational, health, legal and other services, which will only be covered by the directive if a higher threshold (€750,000) is met. These services will be subject to limited procedural requirements, including, for example, easier advertisement of planned contracts (through contract notices or prior indicative notices) and simplified processes for announcing award of the contract (possibly in a “grouped” notice published on a quarterly basis). The Commission’s rationale here is that these categories of services often have a limited cross-border dimension or vary widely amongst member states due to different cultural traditions.

**Simplified Procedures for Local Authorities**

The Public Procurement Directive streamlines the procedural requirements for local authorities. Member states are allowed to permit local authorities to advertise contracts using prior information notices rather than a formal contract notice, and may allow them to set reduced time limits.

**Co-operation between Public Authorities**

For the first time, the Public Procurement Directive seeks to harmonise EU law on co-operation between public authorities. We have written extensively elsewhere about the *Teckal “in-house” exemption*. Until now, this area has been addressed through decisions of the courts, especially the European Court of Justice.

In the future, a contract awarded by a contract authority to another legal person governed by public law will fall outside the scale of the directive where specific legislative requirements are met.

Public contracts awarded to controlled legal persons will not be subject to a procurement regime if the contracting authority exercises control over the delivery vehicle which is similar to that which it exercises over its own departments. However, the delivery vehicle must carry out more than 80% of its activities in the performance of tasks entrusted to it by the controlling contracting authority.

The exemption will not apply in situations where there is direct participation by a private sector company in the capital of the delivery vehicle because of the risk of conferring an undue advantage over its competitors.

**Electronic Communications and Invoicing**

Member states will be required to ensure that all communications and information exchanged in a procurement process (including submission of tender documents) is done electronically. In addition, member states must move to full e-procurement within 54 months of the adoption of the directives.

Separately, on 24 January 2014, the Commission announced that it had agreed a way forward on a proposed directive on e-invoicing in public procurement. Under the draft directive, contracting authorities will be required to accept e-invoices that comply with a forthcoming European standard. There is no deadline yet agreed upon for the implementation of this proposal, however.

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1 See our December 2012 update, *In-house Tender Rules for Mutuals and Shared Services*.
Help for SMEs

One of the Commission’s key goals in revising the directives was to cut red tape and improve market access, especially for SMEs. It wants to adapt public procurement to the needs of SMEs.

One new step is to encourage participation by SMEs in public procurement by encouraging contracting authorities to divide large contracts into lots and requiring them to explain in the procurement documents the main reasons for any decision not to do so. The aim is to make the size of the individual contracts better correspond to the capacity of SMEs.

The size and subject matter of the lots should be determined freely by a contracting authority, which will have a duty to consider the appropriateness of dividing contracts into lots.

Where contracts are divided into lots, contracting authorities will be allowed to limit the number of lots for which any particular bidder may tender, and may limit the number of lots that may be awarded to any one bidder.

Also to encourage participation by SMEs, when specifying minimum financial capacity of bidders, the minimum yearly turnover that bidders are required to have will not exceed twice the estimated contract value, except in justified cases (for example, where there are special risks attached to the nature of the works, services or supplies).

Other Measures

The Public Procurement Directive also contains:

- strengthened procedures in relation to sub-contracting;
- clearer rules relating to modifications of contracts, providing safe harbour thresholds for the value of modifications below which modifications may be made without a new procurement – thus avoiding issues with the pressetext decision\(^2\);
- revised provisions relating to the way in which authorities deal with abnormally low tenders;
- new measures to avoid conflicts of interest in procurement procedures; and
- more rules relating to exclusion from tenders in specific circumstances.

Practical Consequences

It’s hard to say who the winners will be once the changes are introduced by the new directives. The EU Commission and national governments have been quick to highlight many changes that ought to help SMEs compete more effectively for public contracts. Whether that happens in practice depends on how the new regime is applied by public bodies.

There’s something for both sides of the procurement fence in the new regime. Authorities will welcome the relaxation of the rules around choice of award procedure and the new simplified light-touch regime for certain services. Bidders – especially in the SME community – will also welcome some of the relaxations and streamlined regime for communications and self-certification of qualifications.

In the short term, expect a generally higher level of uncertainty than normal as both bidders and awarding authorities get used to the new rules.

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\(^2\) See our January 2009 update, [Amending an Existing Contract](#).
Closing the Gap on Concession Contracts

European Union sets up harmonised framework for awarding of “concession contracts”

In the European Union (EU), around 60% of Public-Private Partnerships (PPP) are entered into on a concession basis. This represents an EU-wide market worth more than €100 billion ($135 billion) each year. For the first time, the EU has now issued legislation to harmonise and regulate procurement in the market for public concession contracts.

Concession Contracts in Practice

A concession is a grant of rights – perhaps of land or property or, often, a right to operate in a particular sector – by a government, local authority, corporation, individual or other legal entity. The concession may include the right to build and/or use some form of public infrastructure or the right to exploit certain natural resources.

Under a concession contract, the concessionaire (typically a private company) builds and/or operates some form of infrastructure project (e.g., a toll road, bridge or port) or provides services of public interest (e.g., energy, public and ambulance transport services, or broadband cable network services in private households).

Current Regulatory Framework: Minimum Standards Developed by the European Court of Justice

Unlike public contracts and works concessions (which are already governed by Directives 2004/17/EC and 2004/18/EC), the awarding of service concessions is currently not regulated by specific EU legislation. In order to avoid the requirement to follow formal contract award procedures as required under those Directives, there has been a considerable incentive for public authorities to treat a contract as a concession rather than as a public contract and, in extreme cases, to award such contracts directly (and sometimes even clandestinely) to a certain company favored by the public entity. Lack of precise criteria to distinguish between the two concepts of contracts fostered this practice.

Accordingly, national courts have frequently referred cases to the European Court of Justice (ECJ) in litigation concerning the awarding of concession contracts. Starting with its judgment in the Teleaustria case in 2000 (C-324/98), the ECJ has developed minimum standards of transparency and equal treatment to be guaranteed by contracting authorities when awarding concession contracts. Only recently, the ECJ held in two further cases related to the provision of cable network services (C-221/12 – Belgacom) and an infrastructure project (C-388/12 – Comune di Ancona) that the direct awarding of concession contracts without prior advertising or use of competitive tendering would be in violation of the general principles of the Treaty on the Functioning of the European Union (TFEU).

New Directive Designed to Bring EU-Wide Harmonisation and Further Promotion of Competition

As a result of the EU Commission’s initiative to harmonise the legal framework and to promote competition for service concessions, on 15 January 2014, the EU adopted, as part of its major reform package on public procurement laws a separate “Directive of the European Parliament and of the Council on the award of concession contracts” (“Concession Contracts Directive” or CCD). The CCD contains a comprehensive set of rules to be followed in concession contract award procedures and essentially codifies the prior ECJ rulings.
The new CCD regime is part of a package of three new directives, two of which replace the existing rules outside the concession sector. The directives are:

- a replacement of Directive 2004/18 on the procedures for the award of public supply, public service and public works contracts – the **Public Procurement Directive**;

- a replacement of Directive 2004/17 dealing with procurement by entities operating in the water, energy, transport and postal services sectors – the **Utilities Directive**; and

- a directive on the award of concession contracts – the **Concession Contracts Directive**.

We have published a separate article in the *European Procurement and Government Contracts Digest* about the main changes made by the Public Procurement Directive and the Utilities Directive. What follows is a summary of the key reforms made in the Concession Contracts Directive.

**Timeline for Implementation**

Following the publication of the CCD in the EU’s *Official Journal* (expected in March 2014), the EU member states will have a period of 24 months to transpose the CCD into their national laws. Despite the time allotted for implementation, several member states seem likely to amend their national laws well in advance of this deadline.

**Major Elements of the CCD**

- **Definition**: The CCD applies to both so-called service concession contracts and works concessions (the latter are currently governed by Directive 2004/18/EC). “Concessions” are defined by the CCD as contracts under which the contracting authority grants a right to exploit certain works or services to an economic operator, while the contracting authority obtains the benefits of the works or services. Moreover, the CCD codifies a key characteristic of concession contracts which is that the operational risk in exploiting works or services is transferred to the concessionaire. According to the CCD, the concessionaire is said to bear this risk if “under normal operating conditions, it is not guaranteed to recoup the investments made or the costs incurred in operating the works or the services which are the subject matter of the concession”.

- **Thresholds**: The CCD applies to contracts worth €5,186,000 (approx. $7 million) or more, based on an estimate of the concessionaire’s total turnover during the term of the contract. It is a feature of this type of contract that contract durations are often quite long in view of the requirement for up-front investment; although one aim of the CCD is, in future, to avoid unnecessarily long durations.

- **Procedure**: The CCD obliges public authorities to guarantee transparency (e.g., by way of publication of requirements) and non-discrimination (e.g., through binding application of pre-defined awarding criteria), but does not prescribe any specific formal procedure. The flexibility to design an individual awarding procedure is one major difference compared to the award of other types of public contracts.

- **Selection of bidders and awarding criteria**: The CCD obliges the contracting authorities carefully to assess the bidders’ compliance with the conditions for participation in the tender proceedings which may relate to specific qualitative requirements justified by the subject of the concession contract. Moreover, the contract award decision has to be based on the assessment of the bids with regard to objective and pre-defined criteria that collectively offer an overall economic advantage for the contracting authority.
• **Simplified regime for specific services:** With regard to specific services listed in Annex IV of the CCD, such as health, social and related services as well as postal services, a light-touch regime applies. Under this regime, the contracting authority is only required to publish (1) a prior information notice about the authority’s intention to award a concession, and (2) a concession award notice after the contract has been concluded. Contracting authorities therefore have wider discretion to conclude concession contracts related to those types of services.

• **Legal protection:** In addition, concession contracts will now fall into the scope of the EU Remedies Directives, ensuring that bidders have access to a system of effective legal protection, in particular against violation of the basic principles of transparency and equal treatment.

**Other Elements and Exclusions of Specific Concession Contracts**

As is the case for the amended Public Procurement Directive and the Utilities Directive, the CCD contains, amongst others, detailed rules related to sub-contracting and to modifications of contracts.

The scope of the CCD is limited due to a broad set of exclusions which particularly concern sectors that are subject to specific regimes (e.g., public transport and defence). In addition, the CCD is not applicable in case of so-called in-house contracts (i.e., in simple terms, contracts for services or works provided by an entity which is controlled by the contracting authority) as well as in certain scenarios of cooperation among several contracting authorities.

**Practical Consequences**

In the light of the new regime on concessions, contracting authorities and private companies should align their activities with the new provisions at an early stage. Several countries are set to amend their national laws promptly and others (e.g., Austria, France and Spain) already had adopted specific rules on concessions before and independently of the present EU reform.

Public authorities in countries currently lacking any specific rules on service concessions (e.g., Germany, the UK) will have to amend their practice of awarding concessions in order to ensure compliance with the new rules.

For potential bidders, the new regime allows easier comprehensive monitoring of upcoming major concession contracts for companies interested in business opportunities across the EU. In addition, companies may rely on more precise procedural guarantees and can seek legal protection in case of non-compliance with the open tendering rules under the new regime.

Taken as a whole, the new regulatory framework ought to prevent public authorities from awarding concession contracts directly to preferred bidders without carrying out a transparent contract award procedure – a practice which impeded competition within the EU-wide internal market. However, there remains a substantive difference between formal proceedings under the EU Directives on public contracts and the rather vague requirements defined by the new CCD. Therefore, the distinction between a public contract and a concession contract remains important in each individual case and it is likely that the question of whether the major part of operational risk has been transferred to the economic operator (in which case, the concessions regime applies) or remains with the contracting authority (in which case, the public contracts regime applies) will still keep the courts busy.
## Summary – Why MoFo?

<table>
<thead>
<tr>
<th>Top Quality Legal Advice</th>
<th>Our approach to each of our client engagements is consistent: we provide high quality legal services in a down-to-earth and practical manner; and we offer our clients the highest levels of commitment and responsiveness.</th>
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<tr>
<td>Experience of UK Public Sector IT Projects</td>
<td>Our London office is recognised as a market-leader in advising on projects procured in accordance with the Public Contracts Regulations. Our group leader, Alistair Maughan, is one of the foremost lawyers in the UK in this field and is a member of OGC’s Legal User Group.</td>
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<tr>
<td>Relevant Expertise</td>
<td>MoFo is a world leader among law firms advising on IT and outsourcing projects: we are the only law firm with a top-tier technology transactions practice across 3 continents. We combine this with expertise in key areas such as public procurement law, HR, data privacy/security and freedom of information law.</td>
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<td>Named, Dedicated Team</td>
<td>We have assembled a team of lawyers with strong experience on government technology projects. This allows us to flow-down work to more junior, cost-effective resources without loss of quality or relevant experience.</td>
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<td>Authority-side work</td>
<td>We have a strong track record of advising government departments on outsourcing and procurement projects. We have been involved in public sector projects for, among others, HMRC, NPIA, DWP, UK Border Agency, UK Benefits Agency, DVLA, department for Transport and Ambulance Radio.</td>
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<td>Bid-side work</td>
<td>Our team has experience of advising bidders on major public sector projects including Fujitsu, EDS, PwC, IBM, Booz &amp; Co. and 3M. During the bid phase, we understand the dynamics of the customer relationship that our clients need to preserve – and we seek to optimise bids and enhance our clients’ distinguishing features through the commercial negotiations.</td>
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<tr>
<td>More than just Lawyers</td>
<td>We do more than just provide legal advice. We will help our clients to avoid unnecessary risks and deliver their project on time and on budget. We look for creative and innovative solutions to our clients’ business issues. Each project is a commercial, regulatory, technical and economic jigsaw. We’re great at project management (and jigsaws!).</td>
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<td>Thought Leaders</td>
<td>We’re helping to shape the public sector and outsourcing industries. Check out our library of useful materials at <a href="http://www.mofo.com/sourcing">www.mofo.com/sourcing</a></td>
</tr>
<tr>
<td>The MoFo Way</td>
<td>We commit to our clients and become a part of their team. We avoid legalese, jargon and academic answers to issues. Think lawyers with their sleeves rolled up, not academic legal advisors.</td>
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Alistair Maughan leads our UK public sector group and is acknowledged to be one of the UK’s foremost public sector IT lawyers. He has 20 years’ experience advising on high-profile public sector projects involving procurement law issues. His transactions include:

- advising HMRC on all aspects of the ASPIRE contract including the merger of ASPIRE with HMC&E’s ISA contract, as well as claims against HMRC’s suppliers relating to NTC, CHIEF and other matters;
- advising National Police Improvement Agency on its national fingerprint identification system and its project for the delivery of a UK emergency mobile radio network (including the major extension to cover the London Underground network);
- advising UK Border Agency on the procurement of a global visa application system for the United Kingdom.

His other public sector clients over the years have included the Ministry of Defence, Department for Transport, the Benefits Agency, DWP, CCTA (predecessor to OGC), Rural Payments Agency.

He also advises bidders on major public sector projects. Clients on past projects include Fujitsu, EDS, PwC, TCS and Booz & Co.

He has advised on all forms of public procurement projects, including one of the first successful competitive dialogue projects, HMRC’s “CHIEF” project to replace the UK’s import/export tracking system.

Alistair focuses on IT, software, IP and outsourcing projects for major companies and public sector organisations. His primary areas of expertise include advising on outsourcing transactions (both IT and business process-driven; and both on-shore and offshore); negotiating contracts for the supply and acquisition of technology equipment, services and software; advising on issues and contracts related to e-commerce; counselling public bodies on procurement policy and procedures; and drafting, negotiating and advising on all types of technology contracts and issues.

**Professional qualifications and/or recognition/awards and publications:**

Alistair Maughan was admitted as a solicitor in England and Wales in 1987. He has practised law on both sides of the Atlantic and was also admitted to the New York Bar in 1990.

For a number of years, he has been on the legal user group advising the UK government on its model form IT services contract.

Alistair is a highly-regarded commercial lawyer. The *Legal 500, Chambers Global* and *Chambers UK*, leading independent guides to the legal profession, recommend him as having “a formidable reputation on major projects”, and comment that he “impresses clients with an outsourcing profile that is judged to be ‘as good as you can get’”; and is “the best outsourcing lawyer ever when it comes to acting for the customer end of the market,” and “the King of outsourcing.” *PLC Which Lawyer* describes him as “a leader in the field, particularly highly regarded for his public sector-related work.”

Alistair is a regular speaker at seminars and conferences on procurement, IT and outsourcing issues.
Felix Helmstädter is a lawyer in Morrison & Foerster’s Berlin office. Felix is a member of our Government Contracts, Antitrust and Energy practice groups. Recent credentials include:

- advising local public transport company Berliner Verkehrsbetriebe (BVG) in public procurement proceedings.
- advising German cable network operator Tele Columbus GmbH in antitrust and public procurement proceedings.
- advising WESTbahn Management GmbH (Vienna, Austria) in antitrust law court proceedings claiming access to timetable information systems operated by ÖBB, in public tender review proceedings regarding direct awards of public service contracts and in state aid law matters.

Other clients include Railway Development Corporation (RDC), Hamburg-Köln-Express GmbH and Axel Springer.

His practice focuses on German and European antitrust and regulatory law as well as state aid and public procurement law. He has particular industry-specific experience in the public sector and in the areas of media, telecommunications and transportation. Felix is experienced in handling public procurement procedures from both, the public authority’s perspective and the bidder’s perspective, including bid protest proceedings.

Professional qualifications and publications:

Felix is a frequent speaker at seminars (e.g., lecturer for antitrust law in the media industry, Humboldt University of Berlin, 2013) and published works on competition in the railway industry and on public procurement law. In his doctoral thesis (Dr. iur.), Felix Helmstädter analyzed the concept of ownership unbundling in the railway sector under EU law.