**If you missed a Framework contract opportunity and it's hurting your business, take a minute to check that the Authority isn't breaking the rules!**
Framework contracts are great if you are part of them. They give you access to many opportunities with very restricted competition (and sometime no competition at all!).

However, in two recent EU court cases, the court found that an authority's process to select the framework suppliers is fundamental to identifying whether any mini competition or award under that framework is legal. Basically, the contracting authority must actively “choose” the suppliers to enter its framework for the EU regulations to apply, and for mini-competitions to be a legal way of awarding a contract.

For instance, **NO** actual choice is made if the contracting authority:

* Appoints all bidders who meet the basic evaluation criteria and only checks that the qualifying criteria are met.
* Makes no comparison of different tenders to decide who is selected for the contract.
* Does not score tenders in order to evaluate the bids and decide which to select.

In such cases, a “framework” is not a framework contract under the EU rules. Therefore, if a contracting authority has not “chosen” a supplier, it cannot then use the simplified procurement processes (mini competitions) that the PCR 2015 permits for framework contracts.

This could be significant to us as bid professionals. What is interesting is that in the UK we have many large framework agreements that may have no real selection and for which no “choice” is made. It appears that even G-Cloud could be an example. Where the Crown Commercial Services only checks that suppliers meet the published criteria before granting G-Cloud supplier status and then awarding mini contracts, this ruling could apply.

In the light of these EU court judgements, some major frameworks may not actually be legal frameworks. In such circumstances contracting authorities using the mini-competitions could be breaking the law. In such cases, these mini contracts should have been procured using a different, fully fair and transparent procurement process.

We think that if you are a supplier currently providing services within the G-Cloud or similar frameworks it is unlikely that your contract will be affected, at least for the moment. We expect CCS to respond to this latest judgement and put in some protection measures. However, if you are not “chosen” for a framework but feel that you could provide the service, you may be able to challenge. If you were prevented from bidding because the contract was unfairly allocated through a G-Cloud or similar call off process, you might have good reason to claim damages. We suggest you check and we wait with interest to see if any such claims will arise.

If you may be affected by any of these issues and would like to talk them through with an objective third party, please do give us a call on 01227 860375 for a no obligation conversation.