**Issue:**

We have had problems recently when new customers want to use our frameworks and they have not been explicitly named in the original OJEU notice. This means that technically they are out of scope and not able lawfully to use the framework. This is obviously undesirable and can be confusing for customers and frustrating for us.

We want our frameworks to be available to a broad public sector audience. However, to comply with the regulations we must include all our potential customers in our OJEU notices. But with the best will in the world, it is not always possible to list every possible authority who wants to use our frameworks, because there are hundreds of potential customers out there.

This note explains the regulatory position, sets out the options and provides a standard form of words that we can use in future. See the ‘Proposed approach’ and ‘Action’ paragraphs below for how to proceed.

**Regulatory Position**

As you know the Public Contracts Regulations 2015 (the Regulations) apply to all public sector procurement. In this case, the rules around which contracting authorities can use a framework are described in Recital 60 of the EU Directive (2014/24/EU on public procurement). They aim to ensure that potential users of frameworks can be easily identified from the OJEU notice.

This means that we must either name contracting authorities individually or describe them by ‘other means’, such as a reference to a given category of contracting authorities (for example within a geographical area). We have to describe these categories in a way that makes it possible to verify the identity of the contracting authority concerned easily and unequivocally.

Under the rules, if a contracting authority is brand new (e.g. it is not replacing an existing authority and it is not named on the OJEU notice) then it cannot use the framework.

**Options:**

*Naming each Contracting Authorities individually*: this is obviously the most compliant approach. However, we would like all public sector bodies in the UK, British Overseas Territories and Crown Dependencies to be able to use our frameworks. If we tried to include all possible customers, from anywhere across the UK, British Overseas Territories and Crown Dependencies public sector, we could be looking at over 200 pages worth of named customers in each OJEU notice.

*Using Lists*: We could consider using lists of contracting authorities. We could keep a list within CCS and publish it on Gov.UK. We have in the past used a list maintained by the Office of National Statistics (ONS). However, links to lists are not risk-free because they require the reader of an OJEU notice to take extra steps to verify the identity of an authority by clicking through to the lists. Lists held online by CCS or third parties such as ONS would also need to be maintained to ensure they are accurate according to the date of any given OJEU notice being published. It’s for this reason that using customer lists has proved to be unwieldy and impractical.

*Describing contracting authorities by ‘other means’*. The “other means” interpretation in Recital 60 requires us, as a minimum, to:

1. define the category of the public sector to which the contracting authorities belong. (For example, a city council would be categorised as a local authority);
2. state that the geographical areas the contracting authorities are in; and
3. state the date on which the authorities named in the notice existed - this would the date the OJEU notice is published rather than the date the authorities were first created. In other words, as long as the authority named in the notice existed at the time of the notice, they can use the framework.

**Proposed approach; standard wording for CCS OJEU notices**

We’ve worked with our commercial legal team to develop a ‘hybrid’ approach using:

1. Defined classes of Contracting Authority;
2. Two particular established lists (gov.uk and ONS); and
3. A broad definition of what comprises a Contracting Authority as required by the ‘other means’ provision in recital 60.

This wording has been designed to allow us to identify our potential customers in a legally compliant yet administratively savvy manner. There is some risk in departing from a precise approach of naming each and every relevant contracting authority, for example infraction proceedings. However, this is relatively unlikely and is mitigated by our ‘hybrid’ approach. Furthermore, we are aware that other Central Purchasing Bodies adopt similar but less rigorous practices.

For the avoidance of doubt the defined classes of Contracting Authority includes devolved administrations in the United Kingdom.

**Action:**

The text in the box below should be used for all future OJEU notices.

You will still have to go through some additional steps to establish the definitive list of potential framework customers in each case. The means to do this are all contained within the standard drafting. You will need to check whether all of your intended customers are covered by one or more of the four paragraphs in the draft notice. For example, you may need to check the status of some customers, and/or to check whether they are included on the lists referenced in paragraphs 2 and 3. As you conduct your checks, you will find that paragraphs 1-3 will capture Scottish contracting authorities and paragraph 1 will capture British Overseas Territories and Crown Dependencies contracting authorities.

If after checking the customer lists you think you need something different to the CCS Standard OJEU Notice drafting below, then be sure to seek legal advice prior to making any changes.

If you are unsure in any way on how to proceed, or if you receive a query from a potential supplier, please contact the Commercial Policy Delivery & Disputes team via Policy & Legal Support.

**\*\*UPDATE DECEMBER 2020\*\* Please note that this Best Practice Note and the wording below were updated on 4th December 2020 to include British Overseas Territories and Crown Dependencies.**

**Please ensure - where it is permissible to do so (ie: depending upon the stage of the procurement) - that procurements let after this date are using the revised wording below.**

**CCS STANDARD OJEU NOTICE DRAFTING:**

|  |
| --- |
| **This Framework Agreement [INSERT FRAMEWORK REFERENCE NUMBER] is for use by Contracting Authorities in the United Kingdom, British Overseas Territories, and Crown Dependencies that exist on [INSERT DATE ON WHICH THE OJEU FOR THE RELEVANT FRAMEWORK AGREEMENT IS TO BE PUBLISHED]and which fall into one or more of the following categories:****1. Any of the following:****(a) Ministerial government departments;****(b) Non ministerial government departments;****(c) Executive agencies of government;****(d) Non-Departmental Public Bodies (NDPBs), including advisory NDPBs, executive NDPBs, and tribunal NDPBs;****(e) Assembly Sponsored Public Bodies (ASPBs);****(f) Police forces;****(g) Fire and rescue services;****(h) Ambulance services;****(i) Maritime and coastguard agency services;****(j) NHS bodies;****(k) Educational bodies or establishments including state schools (nursery schools, primary schools, middle or high schools, secondary schools, special schools), academies, colleges, Pupil Referral Unit (PRU), further education colleges and universities;****(l) Hospices;****(m) National Parks;****(n) Housing associations, including registered social landlords;****(o) Third sector and charities;****(p) Citizens advice bodies;****(q) Councils, including county councils, district councils, county borough councils, community councils, London borough councils, unitary councils, metropolitan councils, parish councils;****(r) Public corporations;****(s) Public financial bodies or institutions;****(t) Public pension funds;****(u) Central banks; and****(v) Civil service bodies, including public sector buying organisations.****2. Those listed and maintained by the Government on their website at** [**https://www.gov.uk/government/organisations**](https://www.gov.uk/government/organisations) **or any replacement or updated web-link.****3. Those listed and maintained by the Office of National Statistics (ONS) at** [**https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide**](https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide) **or any replacement or updated web-link.****4. Those bodies in England, Wales or Northern Ireland which are within the scope of the definition of “Contracting Authority” in regulation 2(1) of the Public Contracts Regulations 2015 (PCR) and/or Schedule 1 PCR.** |