

COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

PUBLIC SECTOR VERSION

CLAUSE 63: COMPETITION ACT

DBFOM CONTRACT

CONCESSION CONTRACT

DBFM CONTRACT

DBF CONTRACT

DBOM CONTRACT

DBM CONTRACT

OMF CONTRACT

O&M CONTRACT

INTRODUCTION

This clause deals with the specifics of the Competition Act 2002, which is concerned with anti-competitive practices. Parties to the agreement must ensure compliance with the Competition Act 2002 and/or Article 81(1) and Article 82 of the EC Treaty, and this clause sets out provisions for dealings between parties and the relevant competition authority.

Unsuccessful tenders have sought redress through the judicial system. Procuring authorities should consult appropriate legal advisors in relation to determination of the correct procurement mechanism for their specific project. All procurements must adhere to the E.U. procurement Directives.

CORE CONTRACT DRAFTING

63. COMPETITION ACT

63.1 In the event that either party reasonably considers that this Agreement infringes or may infringe the Competition Act, 2002 and/or Article 81(1) of the EC Treaty, then each party will co-operate with the other using its respective reasonable endeavours and each bearing its own costs and expenses to persuade and satisfy the Relevant Competition Authority, where necessary, of the legality and enforceability of this Agreement in its original form and for such purposes shall jointly undertake all such filings, notifications, discussions, negotiations or settlements with the Relevant Competition Authority as the parties agree shall be necessary or desirable. The parties shall jointly make any necessary written or oral submissions to the Relevant Competition Authority unless requested by the Relevant

Competition Authority to respond individually.

63.2 If any provision of this Agreement is deemed unenforceable by operation of Article 81(1) of the EC Treaty or the Competition Act, 2002 then the parties shall in good faith consult with each other to agree an alternative provision which achieves a result as similar as possible to the result which would have been achieved by the provision deemed unenforceable.

63.3 The parties shall similarly co-operate in order to ensure that the performance of the present agreement does not bring about any breach of the Competition Act, 2002 or Article 82 of the EC Treaty when it is considered that a possible abuse of dominant position may occur as a consequence of the non-exclusive behaviour of one party.

CROSS REFERENCES

This clause is referred to in the following clause of the Compendium:

- Clause 3 (Effectiveness of this Agreement)

There are no references to this clause in the Risk Matrix.