



STATUTORY INSTRUMENTS.

S.I. No. 420 of 2010



RULES OF THE SUPERIOR COURTS (REVIEW OF THE AWARD OF
PUBLIC CONTRACTS) 2010

(Prn. A10/1298)

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We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961 section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 17th day of June 2010.

John L. Murray

Nicholas Kearns

Donal O'Donnell

Elizabeth Dunne

Paul McGarry

Patrick O'Connor

Mary Cummins

Geraldine Manners

Noel Rubotham

I concur in the making of the following Rules of Court.

Dated this 1st day of September 2010.

DERMOT AHERN,
Minister for Justice and Law Reform.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 7th September, 2010.*

S.I. No. 420 of 2010

RULES OF THE SUPERIOR COURTS (REVIEW OF THE AWARD OF
PUBLIC CONTRACTS) 2010

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Review of the Award of Public Contracts) 2010, shall come into operation on the 8th day of September 2010.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2010.

2. The Rules of the Superior Courts are amended by the substitution for Order 84A of the Order set out in the Schedule.

SCHEDULE

“ORDER 84A

REVIEW OF THE AWARD OF PUBLIC CONTRACTS

1. (1) In this Order, unless the context or subject matter otherwise requires—

the “Directives” means and includes all or any of the following:

- (a) the Public Works, Public Supply and Public Services Contracts Directive;
- (b) the Public Utilities Contracts Directive;
- (c) the Review Procedures Directives;

the “Public Works, Public Supply and Public Services Contracts Directive” means Directive 2004/18/EC (O.J. L134 30/4/2004 p.114);

the “Public Utilities Contracts Directive” means Directive 2004/17/EC (O.J. L134 30/4/2004 p.1);

the “Review Procedures Directives” means Directive 89/665/EEC (O.J. L395 30/12/89 p.33 and Directive 92/13/EEC (O.J. L76 23/3/92 p.14);

each as amended by Directive 2007/66/EC (O.J. L335 20/12/2007 p.31);

the “Regulations” means and includes all or any of the following:

- (i) European Communities (Award of Public Authorities’ Contracts) Regulations 2006 (S.I. No. 329 of 2006);
- (ii) European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (S.I. No. 50 of 2007);
- (iii) European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010);
- (iv) European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. No. 131 of 2010).

(2) Words and expressions in this Order shall have the same meanings as in the Directives or the Regulations, as the case may be.

2. An application to the Court pursuant to the Regulations for:

- (a) interlocutory orders with the aim of correcting an alleged infringement or preventing further damage to the applicant’s interests, including measures to suspend or to ensure the suspension of the

procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority;

- (b) the review of a decision of a contracting authority to award or the award of a contract within the scope of the Directives;
- (c) the review of a decision (including an interim decision) of a contracting authority taken under or in the course of a contract award procedure falling within the scope of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 or the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007; or
- (d) a declaration that a contract is ineffective;

shall be made in accordance with the provisions of this Order.

3. An application mentioned in rule 2 shall be made by Originating Notice of Motion grounded upon a statement containing:

- (i) the name, address and description of the applicant;
- (ii) the name, address and description of the contracting authority awarding the contract;
- (iii) a description of the contract;
- (iv) the alleged value of the contract;
- (v) the Regulations and Directive alleged to be applicable;
- (vi) the date of the award of the contract, date of the decision to award a contract or, as the case may be, the date of the decision referred to in rule 2(c) which is complained of;
- (vii) a description of the procedure adopted by the contracting authority;
- (viii) the alleged infringement of the Regulations or the Directives, as the case may be;
- (ix) the interest which the applicant has or had in obtaining the contract or, as the case may be, the harm or risk of harm to the applicant by the infringement;
- (x) the date of the notification to the applicant of the alleged infringement;
- (xi) the date of notification by the applicant to the contracting authority of the alleged infringement and of the applicant's intention to seek review;

- (xii) the relief sought (including: any declaration that a contract is ineffective or other declaration; any injunction; any order setting aside any decision; any order affecting any invitation to tender, contract documents or other document relating to a contract award procedure; or damages), and specifying any interim measures sought;
- (xiii) the grounds upon which each relief is sought;
- (xiv) the name, address and description of any affected parties;
- (xv) the name and registered place of business of the applicant's solicitors (if any); and
- (xvi) the applicant's address for service within the jurisdiction (if acting in person).

The statement grounding the application shall be verified by an affidavit sworn by or on behalf of the applicant which verifies all of the facts relied upon and shall exhibit the notification to the contracting authority of the infringement alleged by the applicant and of his intention to seek a review and the response of the contracting authority thereto (if any).

4. (1) Subject to sub-rule (2), an application mentioned in rule 2 shall be made:

- (i) in a case to which the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 apply, within the relevant period determined in accordance with Regulation 7 of those Regulations; or
- (ii) in a case to which the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 apply, within the relevant period determined in accordance with Regulation 7 of those Regulations.

(2) Notwithstanding sub-rule (1), the Court may grant leave, on the application of the intending applicant for that purpose, to make an application to which Regulation 7(2) of the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 or, as the case may be, Regulation 7(2) of the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 applies after the expiry of the time mentioned in sub-rule (1), where the Court considers that there is good reason to do so.

(3) An application under sub-rule (2) shall be by originating motion *ex parte* grounded upon an affidavit sworn by or on behalf of the intending applicant, but the Court may direct that such an application be made on notice to the contracting authority or any other affected party.

5. (1) Copies of the Originating Notice of Motion mentioned in rule 3, statement grounding the application and verifying affidavit shall be served on the contracting authority and on all other persons directly affected by the application and the Originating Notice of Motion shall be returnable for the first available motion day after the expiry of ten days from the date of service thereof unless the Court otherwise directs.

(2) In a case to which paragraph (a), (b) or (c) of rule 2 applies, the applicant shall notify the contracting authority (which notification may be by facsimile or electronic mail) of the issue of the Originating Notice of Motion immediately following its issue, and shall serve the documents referred to in sub-rule (1) on the contracting authority as soon as practicable thereafter.

6. (1) Any contracting authority or notice party who intends to oppose the application shall file in the Central Office a statement setting out concisely the grounds for such opposition and if any facts are relied on therein an affidavit verifying such facts. A copy of such statement and affidavit (if any) shall be served on all other parties not later than 7 days from the date of service of the notice of motion or such other period as the Court may direct.

(2) Where a contracting authority or notice party opposes the application on the ground that the applicant is not an eligible person (within the meaning of Regulation 4 of the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 or, as the case may be, Regulation 4 of the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010), that contracting authority or notice party may apply to the Court for an order dismissing the application by motion on notice, grounded on an affidavit, in the proceedings commenced by Originating Notice of Motion, which motion may be made returnable for the return date of the Originating Notice of Motion.

7. (1) An affidavit giving the names and addresses of all persons who have been served with the Originating Notice of Motion and the places and dates of such service must be filed before the Originating Notice of Motion is heard and if any person who ought to be served under this rule has not been served the affidavit must state that fact and the reason for it and the affidavit shall be before the Court on the hearing of the Originating Notice of Motion.

(2) If, on the hearing of the Originating Notice of Motion the Court is of the opinion that any person who ought to have been served whether under this rule or otherwise has not been served the Court may adjourn the hearing on such terms (if any) as it may direct in order that notice may be served on that person and the Court may make such orders or give such directions pursuant to Order 10 or Order 11 as appear just and proper in the circumstances.

(3) The Court may, at any time it thinks fit, order that notification of an application mentioned in rule 2 or of any order that the Court has made be sent to such person, body or institution as may be appropriate or may direct that such application or order, as the case may be, be advertised in such manner, time and place as the Court thinks proper in the circumstances.

(4) The Court may, at any time and having regard to any of the issues raised in an application mentioned in rule 2, direct that the application or any specified issue in the application be determined by way of plenary hearing and may give such further directions as appear necessary in the circumstances.

8. (1) The Court may on the hearing of the Originating Notice of Motion allow the applicant or any other party to amend his statement whether by specifying different or additional grounds of relief or opposition or otherwise on such terms, if any, as it thinks fit and may allow further affidavits to be filed if they deal with new matters referred to in an affidavit of any other party to the application.

(2) Where the applicant or any other party intends to apply for leave to amend his statement or to use further affidavits he shall give notice of his intention and of the proposed amendment to every other party.

9. At any time after the issue of the Originating Notice of Motion an applicant for review may make an application to the Court for interim or interlocutory orders for interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned including measures to suspend or to ensure the suspension of the procedure for the award of the public contract concerned or the implementation of any decision taken by the contracting authority.

10. On the hearing of any Originating Notice of Motion or motion under this Order any person who desires to be heard in opposition to the motion and appears to the Court to be a proper person to be heard shall be heard notwithstanding that he has not been served with the Originating Notice of Motion or notice of the motion.

11. On the hearing of an Originating Notice of Motion or motion under this Order, the Court may make such order pursuant to the Directives and/or the Regulations as appears just and proper in the circumstances including an order providing for the costs of the proceedings or such further or other order as it thinks fit.”

EXPLANATORY NOTE

(This does not form part of the instrument and does not purport to be a legal interpretation.)

These rules prescribe the procedure in respect of applications to the High Court under: the European Communities (Award of Public Authorities Contracts) Regulations 2006 (S.I. No. 329 of 2006); the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (S.I. No. 50 of 2007); the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (S.I. No. 130 of 2010); and the European Communities (Award of Contracts by Utility Undertakings) (Review Procedures) Regulations 2010 (S.I. No. 131 of 2010).

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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