
STATUTORY INSTRUMENTS

2015 No. 102

The Public Contracts Regulations 2015

PART 3

REMEDIES

CHAPTER 6

APPLICATIONS TO THE COURT

Grounds for ineffectiveness

99.—(1) There are three grounds for ineffectiveness.

The first ground

(2) Subject to paragraph (3), the first ground applies where the contract has been awarded without prior publication of a contract notice in any case in which Part 2 required the prior publication of a contract notice.

(3) The first ground does not apply if all the following apply:—

- (a) the contracting authority considered the award of the contract without prior publication of a contract notice to be permitted by Part 2;
- (b) the contracting authority has had published in the Official Journal a voluntary transparency notice expressing its intention to enter into the contract; and
- (c) the contract has not been entered into before the end of a period of at least 10 days beginning with the day after the date on which the voluntary transparency notice was published in the Official Journal.

(4) In paragraph (3), “voluntary transparency notice” means a notice which contains the following information—

- (a) the name and contact details of the contracting authority;
- (b) a description of the object of the contract;
- (c) a justification of the decision of the contracting authority to award the contract without prior publication of a contract notice;
- (d) the name and contact details of the economic operator to be awarded the contract; and
- (e) where appropriate, any other information which the contracting authority considers it useful to include.

The second ground

(5) The second ground applies where all the following apply—

- (a) the contract has been entered into in breach of any requirement imposed by—
 - (i) regulation 87 (the standstill period),

- (ii) regulation 95 (contract-making suspended by challenge to award), or
- (iii) regulation 96(1)(b) (interim order restoring or modifying a suspension originally imposed by regulation 95);
- (b) there has also been a breach of the duty owed to the economic operator in accordance with regulation 89 or 90 in respect of obligations other than those imposed by regulation 87 (the standstill period) and this Chapter;
- (c) the breach mentioned in sub-paragraph (a) has deprived the economic operator of the possibility of starting proceedings in respect of the breach mentioned in sub-paragraph (b), or pursuing them to a proper conclusion, before the contract was entered into; and
- (d) the breach mentioned in sub-paragraph (b) has affected the chances of the economic operator obtaining the contract.

The third ground

- (6) Subject to paragraph (7), the third ground applies where all the following apply—
 - (a) the contract is based on a framework agreement or was awarded under a dynamic purchasing system;
 - (b) the contract was awarded in breach of any requirement imposed by—
 - (i) regulation 33(11) (award of contracts based on framework agreements through re-opening of competition), or
 - (ii) regulation 34(21) to (24) (award of contracts under dynamic purchasing systems);and
 - (c) the estimated value of the contract is equal to or greater than the relevant threshold mentioned in regulation 5.
- (7) The third ground does not apply if all the following apply—
 - (a) the contracting authority considered the award of the contract to be in accordance with the provisions mentioned in paragraph (6)(b)(i) or (ii);
 - (b) the contracting authority has, despite regulation 86(5)(c), voluntarily complied with the requirements set out in regulation 86(1) to (4); and
 - (c) the contract has not been entered into before the end of the standstill period.