
STATUTORY INSTRUMENTS

2016 No. 274

The Utilities Contracts Regulations 2016

PART 5

REMEDIES

CHAPTER 2

APPLICATIONS TO THE COURT

Grounds for ineffectiveness

114.—(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 notice in the Official Journal in any case in which these Regulations required the prior publication of such a notice.

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

- (a) the utility considered the award of the contract without prior publication of such a notice to be permitted by these Regulations;
- (b) the utility 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 is in the standard form set out in Annex XII to Commission Implementing Regulation (EU) 2015/1986⁽¹⁾ as amended from time to time, and which contains the following information—

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

The second ground

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

- (a) the contract has been entered into in breach of any requirement imposed by—

⁽¹⁾ OJ No L 296, 12.11.2015, p1.

- (i) regulation 102;
- (ii) regulation 110; or
- (iii) regulation 111(1)(b);
- (b) there has also been a breach of the duty owed to the economic operator in accordance with regulation 104 or 105 in respect of obligations other than those imposed by regulation 102 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 of the following apply—
 - (a) the contract was awarded under a dynamic purchasing system;
 - (b) the contract was awarded in breach of any requirement imposed by regulation 52(21) to (24); and
 - (c) the estimated value of the contract is equal to or greater than the relevant threshold mentioned in regulation 16.
- (7) The third ground does not apply if all of the following apply—
 - (a) the utility considered the award of the contract to be in accordance with regulation 52(21) to (24);
 - (b) the utility has, despite regulation 101(5)(c), voluntarily complied with the requirements set out in regulation 101(1) to (4); and
 - (c) the contract has not been entered into before the end of the standstill period.