

Ireland

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Legislative framework

1 What is the relevant legislation and who enforces it?

In the Republic of Ireland (excluding Northern Ireland, which is part of the United Kingdom) EC public procurement law is transposed into national law by a series of Regulations (statutory instruments) promulgated by the minister for finance pursuant to the European Communities Act 1972, as amended, authorising a minister of the government to enact such regulations in order to give effect to an obligation of EC law. The 2004 Directives (Directive 2004/18/EC, coordinating the procurement procedures for the award of public works contracts, public supply contracts and public service contracts, the Classic or Public Sector Directive and Directive 2004/17/EC coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors (the Utilities Directive)) were due to have been transposed into national law by 31 January 2006. Transposition was effected by the European Communities (Award of Public Authorities') Regulations 2006 (SI No. 329 of 2006) in respect of Directive 2004/18/EC and by the European Communities (Award of Contracts by Utility Undertakings) Regulations 2007 (SI No. 50 of 2007) in respect of Directive 2004/17/EC. Certain provisions of the 2004 Directives could be deemed to have been 'directly applicable' – that may yet fall to be determined by the courts. The instruments by which the 1992 and 1993 Directives were transposed into Irish national law are as follows:

- European Communities (Award of Public Supply Contracts) Regulations 1992 (SI No. 37 of 1992);
- European Communities (Award of Public Works Contracts) Regulations 1992 (SI No. 36 of 1992);
- European Communities (Award of Public Service Contracts) Regulations 1998 (SI No. 378 of 1998) (replacing earlier Regulations); and
- European Communities (Award of Contracts by entities operating in the Water, Energy, Transport and Telecommunications sectors) Regulations 1999 (SI No. 31 of 1999) (replacing earlier Regulations), all as amended.

Each of these Regulations implements the corresponding directives and all have been repealed by the 2006 and 2007 Regulations.

There are separate regulations which implement the EC Remedies Directives:

- European Communities (Review Procedures for the Award of Public Supply, Public Works and Public Services Contracts) (No. 2), Regulations 1994 (SI No. 309 of 1994); and
- European Communities (Review Procedures for the Award of Contracts by Entities operating in the Water, Energy, Trans-

port and Telecommunications Sectors) Regulations 1993 (SI No. 104 of 1993), each as amended. These have not been affected by the 2006 and 2007 Regulations.

In general, enforcement is by action in the courts pursuant to the Regulations transposing the Remedies Directives and pursuant to Order 84A of the Rules of the Superior Courts (introduced pursuant to the Rules of the Superior Courts (No. 4) (Review of the Award of Public Contracts) 1998 (SI No. 374 of 1998) which puts in place order 84A of the Rules of the Superior Courts and provides a judicial review procedure in respect of each of the Remedies Directives governing the Public Sector Directive as well as the Utilities Directive.

Public bodies are also subject to administrative oversight under various guidelines, circulars and codes of practice, but these are not ordinarily justiciable in themselves.

As a general principle, the ordinary recourse for an aggrieved party is to a judicial review action pursuant to the Remedies Directives as implemented. There is also the possibility of filing complaints with various Irish authorities or with the European Commission – ordinarily outside Irish law – although such a complaint could have the effect of prompting European Commission enforcement proceedings against Ireland.

2 In which respect does the relevant legislation supplement the EU procurement directives or the GPA?

The recently repealed Irish Regulations were quite minimal in their content but gave effect to obligations under the EC Public Procurement Directives. However, a quite different approach is evident in the 2006 and 2007 Regulations, which effect transposition in a very detailed manner. Moreover, the general principles of EC law are applicable in all cases in Ireland even where the Public Procurement Directives would not specifically apply. Thus, it would ordinarily be illegal under Irish law to discriminate in any public procurement matter on the basis of nationality as between enterprises from member states of the European Union. See, for example, the well-known decision in case C45/89 *Commission v Ireland* [1988] ECR 4929 (the 'Dundalk Waterworks' case), a standards case decided in a public procurement context. Furthermore, the general principles of EC law (such as that exemplified in the decision of the European Court of Justice in Case C324/98 *Telaustria*) would apply in Ireland and would ordinarily be enforced by the courts.

3 Are there current proposals to change the legislation?

The references to the new Irish national transposing regulations (other than as to the Remedies Directives), are set forth under question 1. They gave effect to the new Public Sector Directive and the new Utilities Directive. They differ from, and replace, the regulations previously in force.

The minister consulted extensively with various interested parties in relation to the new 2006 and 2007 regulations. They appear to cover all of the requirements under the 2004 Directives, including the new features such as the Competitive Dialogue, Framework Agreements, electronic procurement and central purchasing bodies.

However, the new Regulations do not replace, at least in the short term, the Regulations or Rules of the Superior Courts transposing the provisions of the Remedies Directives 89/665/EEC and 92/13/EEC, already cited above. The European Commission is preparing a separate Directive in that regard.

4 What is the relevant legislation for the procurement of military equipment?

In general, the regulations apply to all contracts let by Irish public authorities including for the acquisition of military equipment. However, certain specific legislation (such as that governing dual use technology) under EC law can have a bearing. In like manner, EC law instruments precluding trade with certain states from time to time may also be relevant.

Applicability of procurement law

5 Which, or what kinds of, entities have been ruled not to constitute contracting authorities?

The Irish High Court referred to the European Court of Justice the question as to the definition of a public body falling within the scope of public procurement law in case C-306/97 *Connemara Machine Turf Co Limited v Coillte Teoranta* [1998] ECR I - 8761. The Irish courts, however, have not made a specific ruling to the effect that specific bodies do not come within the scope of public procurement law.

6 For which, or what kinds of, entities is the status as a contracting authority in dispute?

There are no particular reported decisions of the Superior Courts (Supreme Court and High Court) in Ireland governing this issue. Again this may be considered afresh when new regulations are promulgated by the minister.

7 Are there specific domestic rules relating to the calculation of the threshold value of contracts?

The 2006 and 2007 regulations incorporate the provisions of the 2004 directives, as amended, in this respect but there are no further specific provisions.

In other respects, certain general provisions and principles of Irish national law may be pertinent including, in particular, the principles of statutory interpretation which govern anti-avoidance provisions. These will have been litigated in other sectors (such as Taxation Law) but might well be deemed relevant by analogy in this context.

8 Does the extension of an existing contract require a new procurement procedure?

This can be considered in accordance with the provisions of the 2004 Directives. In general, depending upon the facts, if an extension has not been provided for in tender documents, notices or elsewhere or is outside the circumstances permitted under the EC Public Procurement Directives or the relevant financial thresholds, the 'extension' of an existing contract may well be considered as a new contract which, assuming that no relevant exemption is applicable, would require a new procurement procedure to be initiated.

9 Does the amendment of an existing contract require a new procurement procedure?

The principles governing such an amendment would be broadly similar to those governing an extension and there is no specific wider provision under Irish national law.

10 May an existing contract be transferred to another supplier or provider without a new procurement procedure?

There are no specific Irish rules governing the transfer of a contract to another supplier or provider without a new procurement procedure. However, it is common practice in commercial contract awards to allow for certain transfers to take place including, for example, on large projects to allow for subcontracting, generally with the approval of the awarding authority.

11 In which circumstances do privatisations require a procurement procedure?

There have been no specific reported decisions in the Irish Superior Courts (Supreme Court and High Court) governing circumstances when privatisations might be considered to require a procurement procedure. However, in general, in a privatisation, there is a share offering to the public, typically by means of initial public offering (IPO) or perhaps by way of a trade sale. In either case, the sale of shares and the offer of those shares would not ordinarily constitute a 'procurement'. However, the provision of functions, typically for either the entity in sale (the enterprise to be privatised) or its owner (typically the incumbent or state shareholder), could entail circumstances which would require a procurement procedure – such as the appointment of advisers and with the provision of certain financial services, the award of printing contracts and so forth.

12 In which circumstances do public-private partnerships (PPP) require a procurement procedure?

There are no specific provisions governing the circumstances when public private partnerships (PPP) are considered to require a procurement procedure. The general principles apply and, in many instances, they are similar to circumstances governing privatisations (see question 11). In general, the major procurement issues in PPPs are whether it is permissible to have recourse to the negotiated procedure (although this is not a problem under the Utilities Directive) and whether a concession is involved and, if so, whether services, works or a mixed concession. When devising and planning a PPP project, it is also appropriate to consider at the outset what public procurement discretions and scope need to be provided for, because PPPs require particularly long time-scales and other resources should the procurement procedure be commenced owing to the inadequacy or inappropriateness of

the initial, specified procurement details. Under the new 2004 Directives, it is anticipated that a further issue might be the circumstances in which it is appropriate to have recourse to the competitive dialogue and whether that will, in turn, further limit the circumstances in which recourse may be had to a negotiated procedure.

13 What are the rules and requirements for the award of services concessions?

There are no specific rules or requirements for the award of services concessions. Irish awarding authorities, however, are conscious of the various interpretations accorded to the requirements under EC Law governing service concessions, works concessions and mixed concessions. Moreover, the Interpretative Communications and other publications emanating from the European Commission have received careful consideration by Irish awarding authorities and their advisers. Furthermore, the Commission Interpretative Communication of 23 June 2006 on 'EC Law Applicable to Contract Awards not, or not fully subject to the provisions of the Public Procurement Directives' could be relevant here. There would also be a consciousness of the implications of the Judgments (Including Case C 324/98 *Telaustria* [2000] ECRI-10745) of the European Court of Justice.

14 What are the rules and requirements for the award of an in-house contract without a procurement procedure?

There are no specific Irish rules or requirements for the award of an in-house contract without a procurement procedure other than in accordance with the 2004 Directives, as reflected in the 2006 and 2007 Regulations.

The procurement procedures

15 Does the relevant legislation specifically state or restate the fundamental principles for tender procedures: equal treatment, transparency, competition?

The 2006 and 2007 Regulations do specifically state or restate the fundamental principles for tender procedures including equal treatment, transparency and competition. Moreover, there is a consciousness of these rules and, for example, in the case of *SIAC v Mayo County Council* [2002] 2 ILRM 401, that was determined by the Supreme Court following remittal of the matter from the European Court of Justice, which had adjudicated the matter pursuant to a referral under article 234 EC, these matters were also considered.

There is also a strong consciousness in practice of the decisions of the European Court of Justice in cases such as C-324/98 *Telaustria* [2000] ECR I-10745 and case C-358/00 *Buchhandler-Vereinigung GmbH v Saur Verlag GmbH & Anor* [2002] ECR I-4685. There has been use of the non-mandatory notice facility in the official journal of the European Union, in which contracting or awarding authorities have published notices even though these were not specifically required under the detailed rules of the EC Public Procurement Directives.

16 Does the relevant legislation or the case law require the contracting authority to be independent and impartial?

The relevant 2006 and 2007 Regulations do effectively require the contracting authority to be impartial. Moreover, a developed Irish Administrative and Constitutional Law has involved frequent litigation in the High Court and Supreme Court. Thus,

the constitution of Ireland has been held by the Supreme Court to require a "basic fairness of procedures" (Haughey [1971] IR 217, 263). 'Constitutional Justice' has been developed as a concept by the Irish courts to elaborate upon the principles of natural justice but with constitutionally entrenched standing, so that it is not open to the legislature (Oireachtas) to oust these principles by specific legislative provision.

17 How are conflicts of interest dealt with?

There are no specific rules in Irish legislation governing this. But the general principles of EC Law now state expressly in the 2006 and 2007 Regulations as well as the general principles of administrative law would also be applicable. These include the general principle of *nemo iudex in causa sua* (no person shall be a judge in his or her own cause) and rules against bias.

18 How is the involvement of a bidder in the preparation of a tender procedure dealt with?

There are no specific general provisions governing this under EC Public Procurement Law as transposed in Ireland. However, the principles of equal treatment, non-discrimination, transparency, comity and others are enshrined in the 2006 and 2007 Regulations. Many of these are otherwise also enforced by the Irish courts. The principles of administrative and constitutional law (including constitutional justice) would ordinarily preclude any one potential bidder being afforded preferential treatment over others. In practice, however, this can usually be overcome by affording sufficient time and information to other prospective bidders so that any one potential bidder who might have had prior exposure to the affairs of a prospective awarding authority would not retain a competitive advantage in any procurement process. Indeed, in most circumstances, where a potential bidder had been involved in the drafting of tender documents, it would be unlikely to be in a position to bid. Typically, for example, advisers will either be retained by an awarding authority or by prospective bidders.

19 What is the prevailing type of procurement procedure used by contracting authorities in your country?

All of the procurement procedures available under the EC Public Procurement Directives are frequently used in Ireland. This includes the new Competitive Dialogue. There can sometimes be a discernible pattern among certain awarding authorities or contracting authorities to incline more towards a particular procurement procedure, but that is constantly reviewed by awarding or contracting authorities.

20 Are there special rules or requirements determining the conduct of a negotiated procedure?

There are no specific or express rules or requirements to determine the conduct of a negotiated procedure under Irish national law over and above as set forth in the Public Sector Directives and 2006 Regulations in particular. However, there is a consciousness in Ireland of the limited circumstances in which recourse to a negotiated procedure is permissible other than under the Utilities Directive.

21 When and how may the competitive dialogue be used?

There is no separate provision for the competitive dialogue in Ireland over and above the 2004 Directive 2004/18/EC as transposed by the 2006 Regulations.

22 What are the requirements for the conclusion of a framework agreement?

There are no separate Irish national provisions on the requirements for the conclusion of a framework agreement over and above the 2004 Directives as transposed by the 2006 and 2007 Regulations. Reference is made to the content under questions 8 and 9. There is a consciousness in practice in Ireland of the possibilities that a drawdown pursuant to a framework agreement might well constitute a new agreement or an amended agreement, which, in certain circumstances, might require an additional procurement procedure.

23 May several framework agreements be concluded? If yes, does the award of a contract under the framework agreement require an additional competitive procedure?

There is no separate provision in Irish national law on whether several procurement agreements may be concluded, over and above the 2004 Directives, as transposed by the 2006 and 2007 Regulations. The principles elaborated under questions 8, 9 and 22, may also be helpful.

24 Under which conditions can consortium members be changed in the course of a procurement procedure?

There are no specific Irish national provisions on when consortium members may be changed in the course of a procurement procedure. The general principles of EC law, however, would be applicable. In practice the rules governing changes in consortia are frequently specified by contracting authorities in their tender documentation.

25 Are unduly burdensome or risky requirements in tender specifications prohibited?

There is no specific prohibition of unduly burdensome or risky requirements in tender specifications. However, there would be a consciousness in practice in Ireland of the potential legal vulnerability of unduly burdensome or risky requirements, including against the background that requirements ought generally to be proportionate and not objectively unreasonable. See, for example, *Whelan Group (Ennis) Ltd v Clare County Council*, High Court (Kelly J) [2001] 1 IR 717. In particular, the risk that an unduly burdensome or risky requirement might be held to favour one or more potential bidders or category of potential bidders might frequently deter the imposition of such requirements. It is common practice in negotiations on complex projects (including on public-private partnership projects) that awarding or contracting authorities may engage in negotiation with bidders in relation to particular provisions of contracts or tender specifications but these are ordinarily resolved in the course of negotiation.

26 What are the legal limitations on the discretion of contracting authorities in assessing the qualification of tenderers?

In general, there are no specific provisions to limit the discretion of contracting authorities in assessing the qualification of tenderers over and above the 2004 Directives, as transposed by

the 2006 and 2007 Regulations. But there would be a consciousness of general EC Public Procurement Law and in particular of the decisions of the European Court of Justice in cases such as *C27/86 Constructions et Entreprises Industrielles SA v Association Intercommunale pour les Autoroutes des Ardenes* [1987] ECR 3347. This is particularly pertinent where, in the context of the infrastructure deficit in Ireland, certain sectors of providers of goods, works or services, can, from time to time, be under pressure. But there is also a body of non-Irish providers active in the Irish market. The 2006 and 2007 Regulations expressly provide for such general principles of comity: Regulation 61(7) 2006 and Regulation 54, 2007 recognise such qualifications.

27 What are the requirements for the admissibility of alternative bids?

There are no specific requirements for the admissibility of alternative bids in Ireland over and above the 2004 Directives, as transposed by the 2006 and 2007 Regulations. However, these do not ordinarily take place unless the award procedure makes specific provision for it. Ordinarily the risk of disqualification would deter such bids. But there can be legitimate provision for lots or variant bids.

28 Must a contracting authority take alternative bids into account?

There is no specific provision in Irish national law for a contracting authority to take alternative bids into account. However, if alternative bids were specifically provided for in the tender documentation, then there would be an obligation on the contracting authority to take such bids into account.

29 What are the consequences if bidders change the tender specifications or submit their own standard terms of business?

There is no specific preclusion on this in Irish national law. However, where this would occur, an awarding or contracting authority would ordinarily consider this in the context of whether the tender specification or terms would preclude this or whether the specification or terms might bestow a discretion upon the authority to eliminate or disqualify such bids. In order to ensure compliance with the principles of equality and non-discrimination, the practice, where reasonably practicable, is for contracting authorities to determine their requirements (in the form of the scope or specification) and establish the terms and conditions of contract in advance of the invitation to tender. Accordingly, although there is no specific preclusion on this in Irish law, except where variant bids are permitted and subject to the rules for such variants, contracting authorities would not generally permit bidders to change or amend specifications or submit their own standard terms of business.

30 What are the award criteria provided for in the relevant legislation?

There are no specific additional award criteria provided for in Irish national legislation over and above the 2004 Directives as transposed by the 2006 and 2007 Regulations. However, there is a consciousness in the Irish market of the proper differentiation between qualification criteria and award criteria. For more complex projects, the 'most economically advantageous tender' award criterion is far more commonly employed.

31 What constitutes an 'abnormally low' bid?

There are no specific provisions in Irish law in what constitutes an 'abnormally low' bid over and above the 2004 Directives as transposed by the 2006 and 2007 Regulations. This must be considered by a relevant awarding or contracting authority in the light of the general body of EC Public Procurement Law and on the facts of any given case. Moreover, as stated above, the Irish courts have a developed jurisprudence on anti-avoidance provisions in other contexts.

32 What is the required process for dealing with abnormally low tenders?

There is no specific or express provision in Irish national law for dealing with abnormally low tenders over and above the 2004 Directives as transposed by the 2006 and 2007 Regulations. They fall to be dealt with in accordance with the 2004 Directives.

Review proceedings and judicial proceedings**33** Which authorities may rule on review applications?

See question 1.

As stated, in ordinary course, enforcement is by judicial review proceedings under order 84A of the Rules of the Superior Courts.

In addition, Irish public bodies tend to be subject to a number of administrative (but not ordinarily justiciable) enjoiners by way of guidelines, circulars and codes of practice.

As a general principle, the locus standi rules of the Common Law Courts as developed in jurisprudence apply. These require that, for a litigant to pursue proceedings against a defendant or respondent, the plaintiff or applicant must ordinarily show sufficient legal interest in the subject matter of the proceedings. As a general principle, a mere bystander or what is referred to in the administrative law textbooks as 'the inferring busybody' is not permitted to pursue such proceedings. The courts have striven to strike a fair balance between affording redress for persons legitimately aggrieved on the one hand, and not interfering with or inappropriately delaying public affairs or projects conducted by awarding authorities on the other. Moreover, the courts have stressed that judicial review is not an appeal. Rather, it is a corrective mechanism in which there is a 'curial deference' to the decisions of authorities vested in the first instance with power to make such decisions. This is illustrated by the decision of the Irish High Court (O'Sullivan J) in *Aer Rianta cpt v Commission for Aviation Regulation* [2003] IEHC 12. The courts have stressed many times that they are not in place to enable decision makers at first instance to be 'second guessed'. See also in relation to the discretion of an awarding authority *Advanced Totes Ltd v Bord na gCon* [The Greyhound Racing Board], High Court (Murphy J) [2004] IEHC 415 and Supreme Court [2006] IESC 17. Rather, established principles of judicial review including error of law, procedural error, bias or the fact that a decision was so unreasonable that it could not be objectively sustained are applied. *SIAC v Mayo County Council*, referred to above, hints at a slightly easier burden to be discharged by an applicant in a public procurement context – per Fennelly J in the Supreme Court.

34 How long does a review proceeding or judicial proceeding for review take?

There can be rapid recourse to the courts in a judicial review proceeding and an interim order can be obtained rapidly. A review may come to hearing within six months. The Commercial Court

within the High Court has a discretion to admit certain commercial matters where the monetary value at stake ordinarily exceeds €1 million and in such instance the hearing can be even more rapid and is handled largely electronically.

35 What are the admissibility requirements?

In ordinary course, the admissibility requirements are those of locus standi or sufficient legal proximity, set out above. In judicial review proceedings outside the context of EC Public Procurement, it is ordinarily necessary to apply in the first instance for 'leave to apply', but that requirement is not present in the context of EC Public Procurement Law.

36 What are the deadlines for a review application and an appeal?

Order 84A rule 4 provides that:

an application for the review of a decision for the award of a public contract shall be made at the earliest opportunity and in any event within three months from the date when grounds for the application first arose unless the Court considers that there is good reason for extending such period.

The courts have tended to be strict in requiring promptness in application and there have been several decisions in which challenges to procurement processes have failed on the grounds of lack of promptness in application – for example *SIAC v National Roads Authority*, High Court (Murphy J) [2004] IEHC 128, in the context of the M1 Motorway Project. See also *Dekra Eireann Teoranta v Minister for the Environment and Local Government* [2003] 2ILRM 210 in the context of an application to challenge the award of a national car testing-centre regime.

37 Does an application for review have an automatic suspensive effect blocking the continuation of the procurement procedure?

No. It would be necessary for the applicant to seek an injunction preventing the award of the contract or suspending performance of the contract as part of the judicial review proceedings. It is ultimately within the discretion of the court, but subject to precedential case law, to determine whether or not to grant such injunction.

38 Must unsuccessful bidders be notified before the contract with the successful bidder is concluded?

There is an obligation to notify unsuccessful bidders if they apply for information. Moreover, bidders may have entitlements under other legislation including the Freedom of Information Acts 1997–2003. There is now also a specific express requirement to notify unsuccessful bidders before the contract with the successful bidder is concluded, following the decision of the European Court of Justice in *Alcatel*. Initially, the Department of Finance issued guidance and recommended that a two week standstill period should apply from the date of notification to the tenderers of the decision of the contracting authority to the date of contract award. Regulation 49(5) of the 2006 Regulations and 51(8) of the 2007 Regulations now provide for statutory standstill periods of 14 days in each case.

39 Is access to the procurement file granted to an applicant?

There are no specific rules in the Irish Public Procurement Regulations governing access to a procurement file by an applicant. However, under the Freedom of Information Acts 1997-2003 and certain other legislation (including, for example the European Communities Act 1972 (Access to Information on the Environment) Regulations 1998 (SI No. 125 of 1998)), there may be specific entitlements to information or access to 'records'. The information entitlements in the 2004 Directives may have to be read side by side with such national provisions. However, the national provisions do not purport to limit any provisions of EC Public Procurement Law.

40 Is it customary for disadvantaged bidders to file review applications?

It is customary for unsuccessful bidders to be accorded a 'debrief' or furnishing by the awarding authority, detailing why their bid was unsuccessful, and it is customary for disappointed bidders to seek such debriefs. However, it is not 'customary' for disappointed bidders to file judicial review applications – although such applications are frequent. A disappointed bidder would have to establish it was 'disadvantaged' and would bear the burden of proving this unless there were circumstances to reverse the burden of proof – for example, if another bidder had prior access to relevant information – then the burden of proof might switch to the awarding or contracting authority to demonstrate that all bidders were given adequate information and adequate time to absorb such information, in order to enable them to bid on a fair and competitive basis with any bidder which might have had prior access to information.

41 May a contract be cancelled or terminated if the procurement procedure that led to its conclusion violated procurement law?

There is no specific provision governing whether a contract might be cancelled or terminated if the procurement procedures had led to its conclusion and violated procurement law. However, there would ordinarily be a discretion for contracting or award-

ing authorities to so terminate and it is frequent that awarding or contracting authorities reserve the right in their tender terms not to make any award or not to make the award to the lowest or any tenderer. The courts have a wide discretion under the Remedies Directives and it is considered that this could include the cancellation or termination of a contract that would have been awarded. Moreover, there is provision under the Regulations transposing into Irish national law the Remedies Directives to enable a court to declare such a contract void ('set aside' in the Directive). Moreover, in the light of the decision in case C-81/98 Alcatel, the Department of Finance issued guidance to awarding authorities not to award a contract for a two-week period so as to enable such challenge to be mounted. That is now reflected in the 14-day statutory standstill periods under the 2006 and 2007 Regulations (see answer to question 38).

42 Is legal protection available in cases of a de facto award of a contract, ie, an award without any procurement procedure?

Legal protection is available in cases of a de facto award of a contract without any procurement procedure. If a procurement procedure ought to have taken place pursuant to the EC Public Procurement Directives, then that would ordinarily constitute a breach of such Directives and would ordinarily be justiciable pursuant to order 84A of the Rules of the Superior Courts. In other circumstances, legal protection may also be available pursuant to the generality of the judicial review procedure under order 84 of the Rules of the Superior Courts, which is very similar to that in respect of EC public procurement (for example, there are certain differences such as the requirement to apply for leave before the substantive application). Moreover, it may be necessary or prudent in certain instances for an aggrieved party to institute two separate sets of proceedings in parallel so that redress may be sought under each of order 84 and order 84A. A case in point arose in *MCD Productions v Commissioners of Public Works in Ireland*, 2005 (which did not proceed to judgment) when such proceedings were brought in the High Court in respect of a contract to award facilities in a public park to stage a rock concert.

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