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Debrief

IN PUBLIC PROCUREMENT



*Ronan
Keating*



*When you say
nothing at all*



RPS Consulting Engineers Ltd v. Kildare County Council

*“... saying nothing lest it be used against one is NOT
an acceptable stance for
any public service organization
in its dealings with citizens “*



Evaluation breach of :

Fundamental principles

no 'margin of error'

Irrationality test

no 'margin of error'

Professional judgement

broad 'margin of discretion'

Unless : **'material' + 'manifest error'**



Art. 55.1

***CA must inform tenderers ASAP
of decision reached
concerning award of contract***



Art. 55.2

CA must provide tenderers

**ASAP and not later than 15 days
of written request**

- *reasons, including CRAST;*
- *Name of successful tenderer*



Regulation 5(1) Remedies Regulation (SI 130 2010)

CA can not conclude contract
within the '*standstill period*'



Regulation 6 of the Remedies Regulation

The 'standstill period' runs from the moment the CA has notified the tenderers of:

- Decision concerning award of contract;
- Reasons, including CRAST + name of winner;
- Exact standstill period (Reg. 6 (2)(b))



Regulation 5(4) Remedies Regulation (SI 130 2010)

Standstill period is:

- Minimum 14 calendar days – electronic notice
- Minimum 16 calendar days – other means



Regulation 7 (2)

Any application for judicial review

**must be made within 30 calendar days
after the tenderer was notified of the
decision/infringement**

alleged in the Application.



Sanofi Aventis Ireland Ltd v. HSE (par. 37)

1. The obligation under Art. 55.1

= a free-standing obligation



Sanofi Aventis Ireland Ltd v. HSE (par. 41)

2. The obligation under Art. 55.2 is only triggered
by "a written request"



Sanofi Aventis Ireland Ltd v. HSE (par. 75)

3. no obligation to provide reasons

in respect of any criterion where

the [disappointed] tenderer

scored a higher mark than the successful tenderer.



Sanofi Aventis Ireland Ltd v. HSE (par. 75)

4. *the same principle*

[no obligation to provide reasons]

*should apply where both the unsuccessful tenderer
and the successful tenderer scored the same marks.*



Sanofi Aventis Ireland Ltd v. HSE

Reasons, must ONLY be provided IF:

- *Requested in writing, and*
- *for award criteria where the successful tenderer scored higher marks.*



Sanofi Aventis Ireland Ltd v. HSE

To pass muster, the reasons given must be sufficient

to enable the disappointed candidate to ascertain the matters of fact and law

on the basis of which the CA rejected its offer and

accepted that of the successful tenderer.



Sanofi Aventis Ireland Ltd v. HSE (par. 118)

5. *Applicants for judicial review ...are required to*

set out their case in sufficient detail

in the statement of grounds

*to enable CA to fully understand the case being made
against it*



Sanofi Aventis Ireland Ltd v. HSE (par. 120)

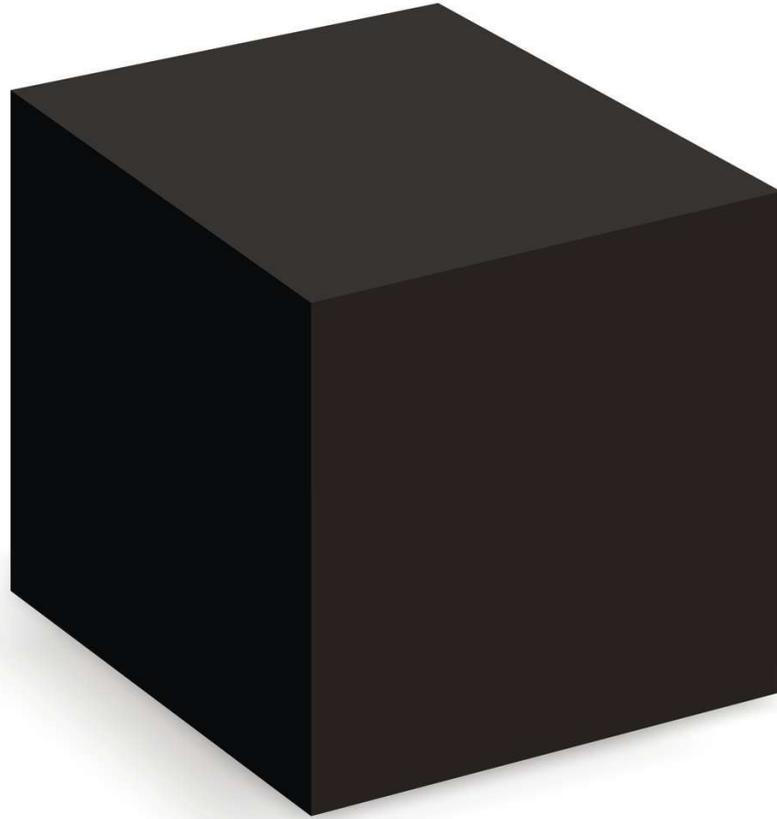
6. *If any ground is to be extended **or** new ground argued, the Applicant must seek an order permitting this.*

*Of course, in a procurement case, **the time limits are such** that any application to amend or expand the grounds in its statement of grounds **would , very likely, founder.***



LIAM Ó DUBHGAIN v. Minister for Culture, Heritage and the Gaeltacht [2019/250 JR]

COSTS IMPLICATION





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THANK  YOU