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# Debrief

## IN PUBLIC PROCUREMENT





## 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 / Reg. 55.1 PCR, 2015

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



## Art. 55.2 / Reg. 55.2 PCR

*CA must provide tenderers*

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

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



## Regulation 87 (1) PCR

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



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;
- Scores of tenderer and successful tenderer; and
- Exact standstill period



## Reg. 87 PCR

### Standstill period is:

- Min. 10 calendar days – electronic (last) notice
- Min. 15 calendar days – other means



## Reg. 92 (2) PCR

**Proceedings must start  
within 30 calendar days beginning with  
*the date when the EO first knew or  
out to have known  
that grounds for starting the proceedings had  
arisen***



# Sanofi Aventis Ireland Ltd v. HSE



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

**1.**

The obligation under Art. 55.1 (Reg. 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 criteria 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)

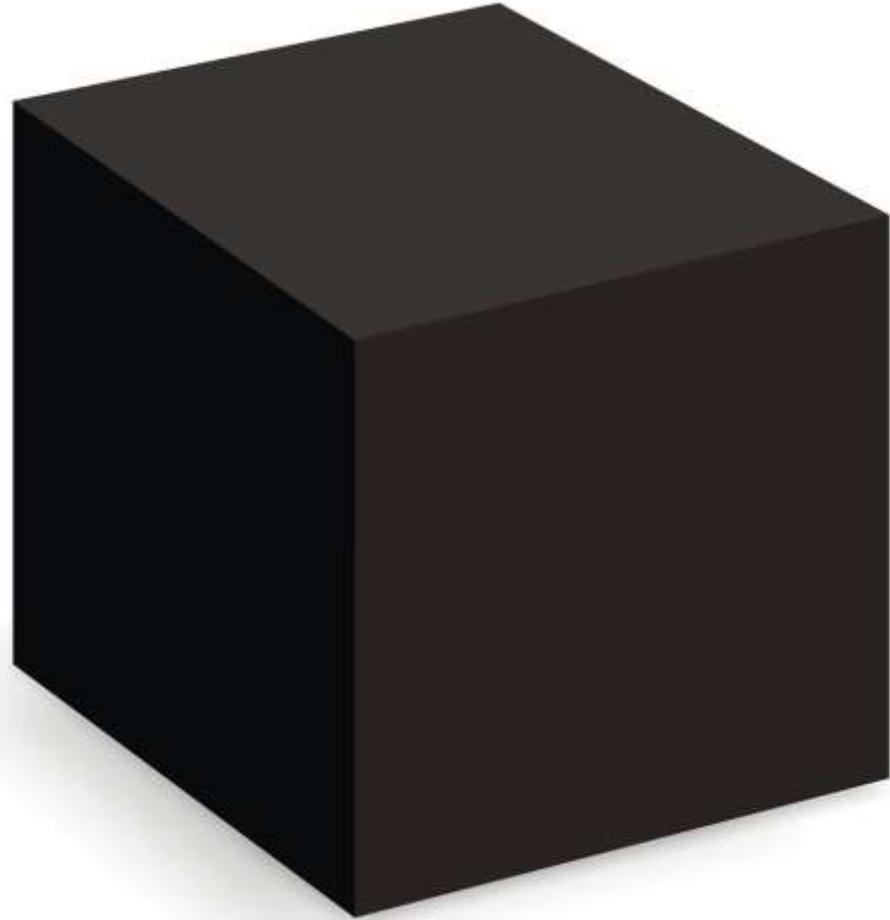
**6.** *If any ground is to be extended **or** new ground argued, the Applicant must seek an order permitting this.*

*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*





*Ronan  
Keating*



*When you say  
nothing at all*

THANK



YOU