

STATUTORY INSTRUMENTS

S.I. No 309 of 1994

EUROPEAN COMMUNITIES

(Review Procedure For The Award Of Public Supply, Public Works and Public Services Contracts) (No. 2) REGULATIONS, 1994

I, Bertie Ahern, Minister for Finance, in exercise of the powers conferred on me by section 3 of the powers conferred on my by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 89/665/EEC¹ hereby make the following Regulations:

1. These Regulations may be cited as the European Communities (Review Procedures for the Award of Public Supply, Public Works and Public Services Contracts) (No.2) Regulations, 1994.
2. (1) In these Regulations - "the Council Directive" means Council Directive No. 89/665/EEC.

(2) A word or expression that is used in these Regulations and is also used in the Council Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Council Directive.
3. As regards contract award procedures falling within the scope of Council Directive No. 93/36/EEC² Council Directive No. 93/37/EEC³ and Council Directive No. 92/50/EEC⁴, decisions taken by the contracting authorities shall be reviewed in accordance with the conditions set out in the said Council Directive.
4. (1) The review procedures referred to in the Council Directive and the powers provided for in Article 2(1) (a) to (c) of the Council Directive shall be carried out and exercised by the High Court.

(2) When considering whether or not to order interim measures the High Court may take into account the probable consequences referred to in Article 2(4) of the Council Directive and may decide not to grant such measures where their negative consequences could exceed their benefits.
5. A person seeking a review of a contract falling within the scope of Council Directive No. 93/36/EEC², Council Directive No. 93/37/EE³ and Council Directive No. 92./50/EEC⁴ shall first notify the contracting authority of the alleged infringement and of his intention to seek a review under these Regulations.
6. When a contract has been concluded subsequent to its award, the high Court may, in the exercise of its powers under Article 2(1) of the Council Directive -
 - (a) declare such contract, or any provision of such contract, to be void, or
 - (b) declare that the contract may have effect only Subject to such variation as the Court shall think fit, including any variation required to protect the

interests of a party to the contract who was not responsible for the infringement of the law concerned, or

(c) make such other order concerning the validity of the contract or any provision of it as the Court shall think fit.

7. Where a contract has been concluded subsequent to its award, the High Court may award damages to any person harmed by an infringement whether or not it decides to exercise the other powers conferred on it by these Regulations.
8. An application under the provisions of these Regulations and the Council Directive may be brought in a summary manner.
9. European Communities (Review Procedures for the Award of Public Supply and Public Works Contracts) Regulations, 1992 (S.I. No - 38 of 1.992), and European Communities (Review Procedures for the Award of Public Supply, Public Works and Public Services Contracts) Regulations, 1994 (S.I. No 5 of 1994), are hereby revoked.

GIVEN under my Official Seal this 7th day of October, 1994
BERTIE AHERN
Minister for Finance

¹ O.J. No L 395/33 30.12.89

² O.J. No L 199/1 9-8.93

³ O.J. No L 199/54 9.8.93

⁴ O.J. No L 209/1 24.7.92