

## THE HIGH COURT

2018 No. 302 JR

**IN THE MATTER OF THE REVIEW OF THE AWARD OF A PUBLIC CONTRACT PURSUANT TO THE EUROPEAN COMMUNITIES  
(PUBLIC AUTHORITIES' CONTRACTS) (REVIEW PROCEDURES) REGULATIONS 2010 (AS AMENDED) AND ORDER 84A OF THE  
RULES OF THE SUPERIOR COURTS (AS AMENDED)**

**Between:****KPW BUSINESS FORMS LIMITED****T/A KPW PRINT MANAGEMENT****Applicant****– and –****STATE EXAMINATIONS COMMISSION****Respondent****JUDGMENT of Mr Justice Max Barrett delivered on 5th March, 2019.**

1. This is an application for costs made in now moot proceedings concerning a competition for the award of a contract relating to the operation of Ireland's second-level examinations. Following the commencement of these proceedings, the SEC, consistent with the RFT, took the decision not to award that contract. So the proceedings became moot because the SEC unilaterally decided not to award the contract. As to the rationale for this last decision, SEC's CEO has averred that "[T]hese Proceedings...brought an automatic stay on the procurement process. That stay in place the Respondent was unable to award the...contract to the successful bidder. That stay might have been challenged, but that...would have taken time, and...would not have allowed time enough to implement the...[proposed] system in 2018....Moreover, there was no certainty that the stay would be lifted...or that [a] ...decision to lift... would go without appeal".

2. In determining this application, the court brings to bear various of the precepts identified, by reference to applicable Supreme Court case-law, in *MKIA v. IPAT* [2018] IEHC 134:

(1) Is there an event to which the general rule as to costs should be applied? Yes, being the SEC's unilateral decision not to award the contract, rendering these proceedings moot.

(2) Is the event caused by the applicant's proceedings? Yes. Were it not for these proceedings the event would not have occurred.

(3) Are the proceedings moot due to a factor outside the control of either party? (4) Are the proceedings moot due to a factor which is within the control of one party but which has no causal nexus with the proceedings? No to both. The proceedings are moot due to the unilateral decision of the SEC not to award the contract (a) in circumstances where it could have arrived at an alternative decision (it could have come to court, albeit that it was free also to take the decision that it did), and (b) in the context of a tendering process, the relatively constrained timeframe of which was entirely of the SEC's design.

(5) Are the proceedings moot due to a factor within the control of one party that does have a causal nexus with the proceedings? Yes, for the reason offered in answer to (3) and (4).

3. Having regard to the foregoing, the court will make an order of costs in favour of KPW.