



Government Legal Department

Rook Irwin Sweeney LLP
107 - 111 Fleet Street
London
EC4A 2AB

Commercial Law Group T 020 7210 3000
102 Petty France
Westminster
London
SW1H 9GL

By email only:

DX 123243, Westminster 12 www.gov.uk/gld

23 July 2020

Your ref: AMI/092
Our ref: Z2007714/AHJ/CLGA

Dear Sirs,

Re: Claim No CO/2437/2020 Good Law Project v MCO (re Public First)

Proposed claim for judicial review – Public First Contract

1. We refer to your letter before action dated 9 July 2020 (“LBA”). We note that your clients have subsequently proceeded to issue an application for judicial review, though for the purposes of this letter we adopt the nomenclature of the template response to a letter before action set out in the Pre-action Protocol for Judicial Review.

The Proposed Claimant

2. The Good Law Project (“GLP”), 3 East Point High Street, Seal, Sevenoaks, Kent, TN15 0EG.

The Proposed Defendant

3. The Minister for the Cabinet Office (“the Authority”), c/o Government Legal Department, Commercial Law Group, 102 Petty France, Westminster, London, SW1H 9GL.

Reference Details

4. Please direct all further correspondence for the attention of
at the Government Legal Department (address above) with the
above reference.

Wendy Hardaker - Head of Division
James Turnill - Deputy Director, Team Leader Commercial Litigation A



Details of the decision under challenge

5. A decision to make an award to Public First Limited (“Public First”) pursuant to Regulation 32(2)(c) of the Public Contracts Regulations 2015 (“PCR 2015”) for the supply of the following services:
 - (i) recruitment and delivery of focus groups and/or mini groups to an agreed specification, covering the general public and key sub-groups defined by demographic, life-stage or other agreed criteria. Same-day top-line reporting and next-day fuller reporting of focus group findings; and
 - (ii) on-site resource to support Number 10 Communications;to assist Her Majesty’s Government in the issuing of emergency messaging to support efforts to combat Covid 19.

The Challenge

6. The Authority denies that GLP has sufficient standing to bring judicial review proceedings. GLP has now threatened and/or brought five judicial review claims in relation to a range of matters where its standing has been strongly contested. Responding in detail to all these claims is costly and time consumptive at a time when such resources are better deployed elsewhere. If, as the Authority anticipates, the Court refuses permission on the basis that your client has no standing the provision of a detailed response at this stage will have been wasted. Further, your client has already issued its claim and therefore does not need the Authority to respond to the LBA in detail to determine whether or not to bring proceedings. As such the Authority resists your client’s application for judicial review on the basis that your client has no standing and will not waste costs engaging with the substance of your claim at this stage. For the avoidance of doubt, however, the Authority considers that permission should be refused in any event.
7. The Authority considers that GLP does not have sufficient standing to bring judicial review proceedings because:
 - (i) this is in substance a procurement challenge. GLP accepts as much because it has now issued a claim by reference to the time limits set out in CPR r.54.5(6). However, no challenge has been received from any economic operator. The Court should not grant permission for a challenge by way of judicial review when there has been no challenge under the relevant legislation by a directly affected party, i.e. under PCR 2015.
 - (ii) even if a challenge to the award of the Contract by way of judicial review were appropriate, GLP lacks the necessary direct interest. It is merely a campaigning group with no special interest in the communications sector and, in particular, the means by the services that are the subject of the Contract are procured. No other more directly affected group has sought to challenge the arrangements put in place by the Secretary of State. There is no basis upon which GLP should be permitted to intervene in arrangements which have not been challenged by any more directly affected party.
8. For these reasons, your client’s proposed claim for judicial review is without merit. The Authority will invite the Court to refuse permission and/or to dismiss the claim and to recover its reasonable costs of and occasioned by defending the same.

'Pestfix' Claim

9. You suggest that this claim ought to be jointly case managed with Claim HT-2020-000226 (the "Pestfix Claim"). We do not consider this to be a sensible approach. Other than the existence of the Covid-19 crisis there is no overlap in the facts of these cases and, save for GLP, all the parties to the proceedings are different.
10. The principle that the Covid-19 gives rise to a situation of extreme urgency has been recognised by the European Commission in the Commission Guidance, which recognises that "for a situation such as the current COVID-19 crisis which presents an extreme and unforeseeable urgency, the EU directives do not contain procedural constraints". With that principle in place, each situation must be considered on its own merits when assessing the applicability of Reg 32(2)(c) of the PCR 2015. Any ruling by the Court in respect of one particular contract will have limited applicability to any other awards that may have been made by the UK Government.
11. We therefore do not consider that it would be efficient for these cases to be jointly case managed.

Directions

12. In section 9 of your letter you propose directions. We agree to your proposed directions at b and c.

Yours sincerely

For the Treasury Solicitor

D +44 (0)20 7210 1336

F +44 (0)20 7210 3072

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