

December is usually an uneventful month, but December 2015 has provided two items of note for procurement watchers.

Declaration of Ineffectiveness: *Lightways (Contractors) Limited v Inverclyde Council* ([2015] CSOH 169)

The Scottish courts have made a declaration of ineffectiveness against an illegal direct award of a contract. In this case the contracting authority purported to award a call-off contract under a central government framework agreement in accordance with the framework rules.

However, the contracting authority entered into a contract with a PPP JV affiliate of the framework holder, rather than the framework holder itself. This was challenged by a third party contractor who was, itself, not on the framework either.

As the contract was entered into with a third party it was treated as an unlawful direct award, notwithstanding the economic relationship between the legitimate framework holder and its affiliate, which was invited to bid on its own account instead of, for instance, acting as a sub-contractor to the framework holder.

This decision does change the balance of authorities and the risk profile, as it proves the existence in the wild of that rarest of mythical beasts (a declaration of ineffectiveness having never before been made by the courts). It will be interesting to see how this story develops.

Further detail can be found at: <https://www.scotcourts.gov.uk/search-judgments/judgment?id=e451fca6-8980-69d2-b500-ff0000d74aa7>

Revised Procurement Thresholds

The procurement rules require contract values above a certain value threshold to be advertised in the Supplement to the Official Journal of the EU (or OJEU). Every two years those contract value thresholds are revalorised. A peculiarity of the fluctuation of the exchange rates has meant that, while the Euro value has gone up, the values in pounds sterling has gone down. The new thresholds for universities caught by the regulated procurement regime (about which more in future bulletins) are:

- Supplies & Services contracts £164,176
- Works contracts £4,104,394
- Light Touch Regime for Services £589,148

You can find out more at the following website: <https://www.gov.uk/government/publications/procurement-policy-note-1815-new-threshold-levels-2016>

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