



Neutral Citation Number: [2026] EWHC 867 (TCC)

Case No: HT-2026-000049

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
TECHNOLOGY AND CONSTRUCTION COURT (KBD)

Royal Courts of Justice
Rolls Building
London, EC4A 1NL

Date: 16/04/2026

Before:

MR ROGER TER HAAR KC

Sitting as a Deputy High Court Judge

Between:

MITIE CARE AND CUSTODY LIMITED

Claimant

- and -

**SECRETARY OF STATE FOR THE HOME
DEPARTMENT**

Defendant

**Ewan West KC and Clíodhna Kelleher (instructed by Osborne Clarke LLP) for the
Claimant**
Azeem Suterwalla KC (instructed by Government Legal Department) for the Defendant

Hearing date: 23 March 2026

APPROVED JUDGMENT

This judgment was handed down remotely at 10.30am on Thursday 16 April 2026 by
circulation to the parties or their representatives by e-mail

Mr Roger ter Haar KC :

Introduction

1. The proceedings before the Court concern a challenge by the Claimant (“Mitie”) to the procurement (the “Procurement”) by the Defendant (“the Home Office”) of a contract for Irregular Migration Management Services at Western Jet Foil and the Manston Reception Centre in Kent (the “Contract”). Mitie was the unsuccessful tenderer.
2. There are two formal applications before the Court:
 - (1) The Home Office’s application to lift the automatic suspension on contract making (the “ATL”) pursuant to Reg. 96(1) of the Public Contracts Regulations 2015 (the “PCR”);
 - (2) Mitie’s application for an expedited trial.
3. Although there is no formal application before this Court, on the eve of the hearing before me Mitie put forward a proposed amendment to its Particulars of Claim to introduce a new ground of challenge. This application is relevant to the application for an expedited hearing and is therefore also relevant to the ATL.
4. As is usual in procurement disputes there is an agreed Confidentiality Ring Order (“the CRO”) in place which goes a little further in its reach than the usual protection of commercially sensitive information. At present the CRO limits the participants in the Confidentiality Ring to lawyers. Mitie says, and I accept, that this has caused some difficulties in its lawyers seeking and obtaining instructions. Mitie suggests that the reach of the CRO is wider than reasonably necessary. I do not need at this stage to resolve any differences between the Parties in that regard.

The Materials Before Me

5. There are a number of bundles of documents before the Court:
 - (1) The Permanent Case Management Bundle – this contains some confidential documents;
 - (2) The “Supplemental Bundle” of which the principal contents are the two parties’ counsel’s Skeleton Arguments, which both contain confidential information;

- (3) The “Non CRO Bundle”, which (as the name suggests) contains documents outside the ambit of the CRO;
 - (4) The “CRO Bundle”, which contains documents within the ambit of the CRO.
6. Seven witness statements have been provided:
- (1) Mr. Lee Tribe, Chief Commercial Officer at the Home Office (one witness statement);
 - (2) Mr. Russell Trent, Managing Director of Mitie;
 - (3) Mr. Duncan Capps, Director of Maritime and Small Boats Operations at the Home Office (two witness statements);
 - (4) Mr. Craig McCarthy, solicitor instructed by Mitie (two witness statements relevant to the matters before me);
 - (5) Mr. Kieran Brierley, employed barrister and senior lawyer in the Government Legal Department).

The Factual Background

7. The factual background which I set out in this section of this judgment substantially adopts the relevant part of Mr. Suterwalla K.C.’s skeleton argument for the hearing before me.
8. The Home Office is responsible for registering individuals that enter the United Kingdom irregularly, including via small boats, into the immigration system. This involves detaining that individual, recording their personal details and biometrics, and ensuring their acute healthcare needs are managed. This process takes place at Home Office-operated short-term holding facilities for asylum seekers and migrants based at the Manston Short-Term Holding Facility in Kent (“Manston”) and Western Jet Foil Disembarkation Site (“WJF”) (together “the Sites”). The Sites are designed to process individuals (the “Service Users”) within 24 hours of arrival. The Service User then leaves the Sites to be transported to a number of different accommodation options. The number of individuals that have had their entry registered at the Sites has varied, but since 2022 it has ranged from 30,000 - 45,000 people per annum. Since the Home Office started recording the numbers of Service Users entering the United Kingdom through small boat crossings, the Sites have accommodated 194,140 Service Users. The Home Office has therefore had to scale up the service and operation at these Sites at pace and through various frameworks and mechanisms available to it to meet the

growing numbers and ensure the safety and care for the Service Users arriving in the United Kingdom.

9. Up until now the provision of services at and in respect of the Sites has been by way of different contracts and therefore different suppliers. In summary, the current arrangements involve 6 suppliers providing Operator Services at the Sites by way of the following contracts:

- (1) OCS Group UK Limited for the provision of Soft Facilities Management (“Soft FM”), which expires on 30 September 2026;
- (2) CMAC Group UK Limited for the provision of transportation services, which expires 31 July 2026;
- (3) Bloom Procurement Services Limited and Definitive PSA Limited (trading as Interforce) for the provision of escorting, which expires 31 July 2026;
- (4) Mitie for the provision of In-Country and Overseas Escorting, Operation and Management of Short-Term Holding Facilities and Holding Rooms and Related Services, which expires 30 April 2028;
- (5) Kilco for the provision of data retention, which expires on 30 March 2026;
- (6) Tagworx for tracking services, which expires on 22 January 2027.

10. The Procurement sought to consolidate the Home Office’s existing contracts into two new contracts – one for the provision of Operator Services and another for the provision of healthcare services across both Sites. Mitie takes issue with this, but the Home Office says that it has been readily apparent from the fact that one Lot was being offered for Operator Services, that one supplier (whether by itself or through sub-contracting) would be responsible for all of those services, and this would therefore lead to the consolidation of the current contracts for these services. I do not need to resolve this difference between the Parties for the purposes of this judgment.
11. On 4 December 2023, the Home Office published a Prior Information Notice setting out its intention to procure the Contract and advertising an industry engagement day to be held on 9 January 2024. On 11 October 2024, the Home Office published a Contract Notice for the Procurement. Mitie, MTC Definitive Limited (“MTCD”) and a third company subsequently participated in the Procurement and submitted bids.
12. There were a number of stages to the Procurement process. At Stage 6, evaluation took place of the best and final offers of those bidders whose tenders had been

deemed compliant to be evaluated. In submitting their tenders, bidders were required to sign up to minimum staffing levels (“the Minimum Staffing Requirements”) for specific elements of the services, together with a minimum ratio of staff to Service Users (“the Minimum Staff to Service User Ratio”). Each bidder confirmed compliance with these requirements through their submission of an “Annex B” spreadsheet and in their answer to Question T1 of the Procurement questions. There were 21 qualitative questions which bidders were required to complete in total (T1 – T21), including in respect of social value. Only T1 and T2¹ are in issue in this claim. The Procurement made clear that if a bidder scored a “0” or “1” for any of the qualitative questions, then the Home Office reserved the right to disqualify them from the competition.

13. On 20 January 2026, the Home Office informed the bidders that MTCD had submitted the winning tender and its intention was to enter into the Contract with MTCD (“the Award Decision”).

Procedural Background

14. The procedural background which I set out in this section of this judgment substantially adopts the relevant part of Mr. West K.C. and Ms. Kelleher’s skeleton argument for the hearing before me.
15. On 20 January 2026, Mitie was notified that its tender had been unsuccessful and that the Defendant intended to award the contract to MTCD (the “Initial Award Notification”).
16. On 22 January 2026 Mitie responded to the Initial Award Notification, contending that the Initial Award Notification contained no substantive information regarding the characteristics of the winning tender, and raising concerns that the named successful tenderer appeared to be a shell company lacking the capacity to satisfy the financial or technical requirements of the Procurement. Mitie sought disclosure of key decision-making documents in relation to the Procurement.

¹ T2 “**Delivery Model**” stated: “The volume of individuals entering the UK irregularly, such as via a small boat, varies day to day. Please detail how you would manage the operation, including how the model will flex to account for changes in demand (i.e. small boat arrival numbers).”

17. On 26 January 2026 the Home Office notified Mitie that the standstill period would be extended until 9 February 2026.
18. On 30 January 2026 the Defendant sent a revised notification to Mitie (the “Revised Award Notification”), which disclosed that the successful tenderer was a consortium including MTCD, Management & Training Corporation Limited and Definitive PSA Ltd, and containing additional information as to the characteristics and relative advantages of the MTCD bid.
19. Mitie responded on 3 February 2026 to set out its concerns that it said had not been addressed in the Revised Award Notification, including that the price tendered by MTCD appeared to be abnormally low relative to the requirements of the contract, including in relation to the staffing levels required under the Contract, and that a former Home Office employee, Mr. David Butler, joined MTCD shortly before the commencement of the Procurement, giving rise to a risk of conflict of interest (the “Conflict Issue”). Mitie reiterated its request for disclosure of the key decision-making documents in relation to the Procurement.
20. On 5 February 2026 the Home Office responded and declined to provide disclosure of the documents sought by Mitie.
21. On 6 February 2026 Mitie set out further concerns in relation to the apparently abnormally low price bid by MTCD and its concerns in relation to MTCD’s staffing model, as it said that the information contained in the Revised Award Notification appeared to indicate that MTCD’s bid departed from the minimum staffing requirements demanded by the Home Office in the Procurement documentation (the “Staffing Issue”). In the same letter, Mitie sought disclosure of MTCD’s tender responses to two technical questions (T1 and T2) which Mitie considered would enable it to understand whether MTCD had departed from the minimum staffing requirements set out by the Home Office.
22. The claim was issued on 9 February 2026, prior to the expiry of the standstill period.
23. On 10 February 2026 Mitie wrote again to the Home Office in respect of its refusal to provide disclosure. Mitie requested disclosure of two further documents submitted by MTCD in relation to the Staffing Issue and further requested disclosure of the detail

of the restrictions that had been placed on Mr Butler following his move from the Home Office to MTCD.

24. On 16 February 2026 Mitie filed and served its Particulars of Claim.
25. On 17 February 2026 the Home Office filed and served the ATL.
26. On 18 February 2026 Mitie wrote again to the Home Office in respect of what Mitie says was its failure to provide any meaningful disclosure in respect of the issues in dispute in the claim. Mitie reiterated its request for the key documents underlying the issues in the claim.
27. On 27 February 2026 the Home Office sought an expedited hearing of the ATL. This hearing was listed in response to that request.
28. On 2 March 2026 Mitie indicated that, if the Home Office did not confirm that it would provide disclosure of the key documents by 4pm on 4 March 2026, that it would make an application for specific disclosure of those documents. The Home Office provided no such confirmation, and an application for specific disclosure followed on 5 March 2026.
29. The Home Office provided draft terms for a CRO on 9 March 2026. Those were agreed on 10 and 11 March 2026, and disclosure of key documents was finally provided on 11 and 12 March 2026 (the “Confidential Disclosure”). This was over six weeks from Mitie’s first request on 22 January 2026, and just over one working week prior to this hearing.
30. The confidentiality ring that currently obtains in these proceedings does not include any client representatives. As such, although the Home Office has disclosed key decision-making documents in this claim, they are only available to external legal counsel. Mitie’s evidence in relation to the ATL was required to be served on 13 March 2026. As Mitie’s witness, Mr Trent, is not aware of the contents of the Confidential Disclosure, his statement does not concern the Confidential Disclosure.
31. On 16 March 2026 Mitie filed the confidential second witness statement of Craig McCarthy (“McCarthy 2”), which concerns the Confidential Disclosure. On Mitie’s case, the consequence of the very late disclosure of the key decision-making documents by the Home Office (on 11 and 12 March) was that it was not possible for

Mitie's external legal counsel to review and consider those documents, and draft, file and serve this statement by 4pm on 13 March 2026. It was filed and served one working day thereafter. Mitie accordingly required and sought the Court's permission to rely on McCarthy 2. In the event, there was no objection to the admission of that statement.

32. On 17 March 2026 Mitie applied for expedition of its claim. That application was supported by the third witness statement of Craig McCarthy dated 17 March 2026 ("McCarthy 3"). In the application notice Mitie has requested that this application be determined at this hearing, and the Home Office has accepted that proposal.
33. At 1800 on 19 March 2026 the Home Office filed responsive evidence in the claim in the form of the first witness statements of Kieran Brierley ("Brierley 1") and of Duncan Capps ("Capps 1"). Key elements of that evidence were marked as being confidential, with the result that only Mitie's external lawyers were able to see them. Mitie says that it agreed to disclosure on a lawyers-only basis in order to obtain documents prior to the ATL hearing but will be prevented from full scrutiny of the disclosure until a client representative is admitted to the Confidentiality Ring. Mitie is pursuing that requirement with the Home Office.
34. Skeleton arguments were submitted in the usual way on 20 March 2026 for the hearing before me on 23 March 2026.
35. On the evening of Sunday 22 March 2026, Mitie's solicitors, Osborne Clarke LLP, sent a letter enclosing a proposed amendment to the Particulars of Claim and suggesting that the expedited hearing which it was seeking the Court should order should proceed in respect of the issue raised by the amendment with the other parts of the claim stayed.
36. The Home Office had, in the circumstances, very limited time to consider the amendment and the suggested procedure.
37. Before me Mr West KC explained Mitie's proposal. I directed that Mitie should serve written submissions as to its proposal for a "staged trial" and expedition – these were served on 25 March 2026. The Home Office responded on 27 March 2026 both by way of written submissions and by serving a second witness statement from Mr. Capps.

Legal Principles

38. Subject to a small area of dispute between the Parties as discussed below, the legal principles governing an application to lift the automatic suspension are well known, agreed between the Parties and can be briefly summarised. The Court should apply the familiar *American Cyanamid* test. The relevant questions are:

- (1) Is there a serious issue to be tried?
- (2) If so, would damages be an adequate remedy for the claimant if the suspension were lifted and it succeeded at trial? In other words, is it just in all the circumstances that the claimant should be confined to a remedy of damages? If so, that should be determinative; the suspension should be lifted.
- (3) If not, would damages be an adequate remedy for the defendant if the suspension remained in place and it succeeded at trial?
- (4) Where there is doubt as to the adequacy of damages for either of the parties, which course of action is likely to carry the least risk of injustice if it transpires that it was wrong; that is, where does the balance of convenience lie?

39. The issue between the Parties is as to whether the Court should consider the above steps one by one, only moving from one step to the next if the answer to the earlier step is not conclusive – thus if there is no serious issue to be tried, steps (2) to (4) need not be considered, and if damages are an adequate remedy for the claimant, steps need not be considered. Mitie says this is the wrong approach.

40. In Mitie’s skeleton argument, Mr West and Ms Kelleher submit as follows:

- (1) Although formulated by O’Farrell J above as four distinct steps, there is however a measure of disagreement in the relevant case-law as to whether the Court should work through them mechanistically and sequentially, or whether a more nuanced approach should be taken. It is notable that in some cases (e.g. *Counted4 Community Interest Company v Sunderland City Council* [2015] EWHC 3898 (TCC) (“*Counted4*”) (at [38] to [59]) the final three steps are all considered under the heading “Balance of Convenience”.

- (2) The approach taken there by Carr J (as she then was) reflects the observations of Coulson J (as he then was) in *Covanta* (at [35]):

“As to the overall approach required by these principles, I have reminded myself of the dicta in a number of the subsequent cases to which I was referred, including *Fellowes and Son v Fisher* [1976] 1 QB 122 CA, and *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] 1 WLR [sic]. In addition, I find considerable assistance in the judgment of Chadwick J (as he then was) in *Nottingham Building Society v Eurodynamics Systems* [1993] FSR 468 where he said that:

“The overriding consideration is which course is likely to involve the least risk of injustice if it turns out to be ‘wrong’ in the sense of granting an interlocutory injunction to a party who fails to establish his rights at trial (or would fail if there was a trial) or, alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. [sic]”

- (3) See also *Covanta* (at [48(a)]) which makes clear that even if damages would be an adequate remedy for a claimant that will normally be sufficient to defeat an application for an interim injunction, although that will not always be the case.
- (4) In *National Commercial Bank Jamaica Ltd v Olint Corp Ltd* [2009] 1 WLR 1405 (“*National Commercial Bank Jamaica*”), the Privy Council held as follows (at [16] to [17]):

“16. ...The purpose of such an injunction is to improve the chances of the court being able to do justice after a determination of the merits at the trial. At the interlocutory stage, the court must therefore assess whether granting or withholding an injunction is more likely to produce a just result...

“17. In practice, however, it is often hard to tell whether either damages or the cross-undertaking will be an adequate remedy and the court has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irreparable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. The basic principle is that the court should take whichever course seems likely to cause the least irreparable prejudice to one party or the other...”

- (5) Finally, in *DWF LLP Ltd v Secretary of State for Business, Innovation and Skills* [2014] EWCA 900 Civ (at [48] to [54]) the Court of Appeal held that once it had been determined there was a serious issue to be tried, the next question was when a trial might be held because, (per

Jacob LJ) “[y]ou cannot assess the later *Cyanamid* questions without this essential background.”

- (6) While Mitie has structured this skeleton argument so as to address the individual elements of the *American Cyanamid* test in turn, it will be submitting that:
- a. The Court must give due recognition to the principle set out by the Privy Council in *National Commercial Jamaica Bank*, namely that it should take the course which causes least irreparable prejudice;
 - b. The issues of adequacy of damages and balance of convenience can only be assessed once the Court has first considered when a trial could be held. For that purpose it should consider not only the Expedition Application but also the question of when a trial might be held even if expedition were not ordered (as was the case in *Involve Visual Collaboration Limited v Secretary of State for Work and Pensions* [2025] EWHC 2664 (TCC) (at [72] to [79]); and
 - c. As explained further at paragraphs 101 to [103] below, the principles relevant to the grant of interim relief in judicial review are also relevant to the determination of the AtL.

41. On behalf of the Home Office, Mr. Suterwalla submits in his skeleton argument:

“Where damages would be an adequate remedy for the claimant, the “normal outcome” should be that the suspension is lifted: *Openview Security Solutions Ltd v London Borough of Merton Council* [2015] EWHC 2694 (TCC) (§70). If damages will be an adequate remedy for a claimant then it will be just for that party to be confined to that remedy: *Medequip Assistive Technology Ltd v The Mayor and Burgesses of the RB Kensington and Chelsea* [2022] EWGC 3293 (TCC) (§41). The burden proof is on the dissatisfied tenderer in establishing that damages would be an inadequate remedy: *Cubic Transportation v TFL and others* [2026] EWHC 61 (TCC) §33.

“The fact that the assessment of damages after trial will not be straightforward and that there will be difficulty in such an assessment does not necessarily mean that damages will not be an adequate remedy for a claimant: *Medequip* at §42. As explained by O’Farrell J in *Bombardier Transportation v London Underground* [2018] EWHC 2926 (TCC) (at §58):

“In most cases, unsuccessful bids are part of the normal commercial risks taken by a business and will not have any adverse impact apart from potential wasted costs of the tender and lost profits. Not every failed bid will result in damage to reputation causing uncompensatable loss. There must be cogent evidence showing the loss of reputation alleged would

lead to financial losses that would be significant and irrecoverable which is or very difficult to quantify fairly.”

And in *Cubic Transportation v TFL*, Roger ter Haar KC, sitting as a Deputy High Court Judge, held:

“..the further a claim departs from obvious and easily provable losses....towards more ephemeral losses (of which loss of reputation may be an example) then the clearer the evidence will need to be to satisfy the Court that there were, or there was a real risk of, such losses.”²

42. In my judgment the general starting point in cases such as this, assuming there is a serious issue to be tried, is to ask the question whether damages would be an adequate remedy for the claimant, and, if the Court comes to a clear answer to that question in favour of the party making an ATL, then it is not necessary for the Court to go on to set out any further reasoning in respect of steps (3) and (4).
43. However, in most cases the Court will receive submissions from the Parties on all four steps. In that process, submissions on steps (3) and (4) may assist the Court in reaching a conclusion on step (2). It may also become clear to the Judge that an early or expedited trial may be a fairer way of proceeding than reaching a firm and potentially preclusive decision on issue (2) when a full trial might provide vital illumination on the issue of adequacy of damages.

Serious Issue to be Tried

44. For the purpose of the ATL only, the Home Office accepts that the Court should proceed on the basis that there is a serious issue to be tried. Notwithstanding, says the Home Office, the case advanced by Mitie is obviously flawed/weak.
45. On Mitie’s part, it is said that it is plain that the claim raises serious issues to be tried, but it is important to understand the nature of Mitie’s claim and the issues to which it gives rise as, in Mitie’s submission, these need to be taken into account by the Court when determining the balance of convenience.
46. In my judgment, in this case it is appropriate to consider to some extent the merits of Mitie’s case when considering Mitie’s application for an expedited trial.

² At §39

The Application for an Expedited Trial

47. Mitie submits, and I accept, that the factors to be considered on an application were set out in *WL Gore & Associates v Geox SpA* [2008] EWCA Civ 622 and have been subsequently affirmed in *Petter v EMC Europe* [2015] EWCA Civ 480 (at paragraph [17]), namely:

- (1) Whether there is a good reason for expedition;
- (2) Whether expedition would interfere with the good administration of justice;
- (3) Whether expedition would cause prejudice to the other party;
- (4) Other special factors.

48. Mitie's challenge has three limbs if the proposed amendment is taken into account.

49. The first limb (one of the two original limbs) concerns the allegation of conflict caused by Mitie's employment of Mr Butler who had previously been an employee of the Home Office and Deputy Director at Manston.

50. The second and third limbs concern allegations that in different ways the engagement of MTCDD would have disadvantageous consequences for the efficacy of the implementation of the services which were the subject of the Contract.

51. Fully understanding these allegations involves discussion of matters which the Home Office regards as confidential and which are covered by the CRO. I do not regard it as necessary to set out further details of those challenges: had I regarded it as necessary to do so, I would have issued an addendum to this judgment to which conditions of confidentiality would have been attached.

52. Mitie's application as formulated in its submission on 25 March 2026 has two alternative proposals:

- (1) Proposal 1 would involve an expedited trial of all three limbs. Mitie's estimate is that this would require a listing of 8 days, comprising 1 day of

judicial pre-reading, 1.5 days for openings, 4 days for evidence and 1.5 days for closings. The anticipated evidence would be (1) 4 evaluators from the Home Office, one senior member of the bid team, and an individual who can speak to the appropriate measures taken to effectively prevent, identify and remedy conflicts of interest and (2) two witnesses from Mitie; thus 8 witnesses in all;

(2) Proposal 2 would involve an expedited trial of the two issues other than the Conflict Issue. Mitie's estimate is that this would require a listing of 6 days, comprising 1 day of judicial pre-reading, 1 day of openings, 3 days of evidence, and 1 day for closing arguments. The anticipated evidence under this proposal would be 4 evaluators, one bid official from the Home Office, and one witness from Mitie; thus 6 witnesses. Under this proposal the Conflict Issue would be stayed, to be left over for a damages-only trial at a later stage if the outcome of the trial in respect of the other two limbs was not determinative of the claim.

53. The Home Office in its Reply submits that Mitie's proposal with respect to expedition has repeatedly shifted.
54. There is substance in this point, but it is a point which needs to be taken in context. The nature of procurement challenges is that the unsuccessful tenderer has a limited time under the PCR to challenge a procurement decision. Being realistic, sometimes a procurement challenge is a kneejerk commercial reaction to an unfavourable decision by a procuring authority. On the other hand, experience shows that there are many instances where the procurement decision falls foul of the legal requirements of a fair procurement process.
55. An unsuccessful tenderer will often be dissatisfied with a procurement decision, but have only limited visibility of how that decision was reached. Early disclosure by the procuring authority, which is now standard practice, enables the dissatisfied tenderer to assess whether the procurement process was fair and legal. This means that it is often the case that the grounds of challenge in procurement cases often change significantly in the early days of a procurement claim.

56. Thus the fact that Mitie's grounds of challenge have changed is not in itself a reason for forming an adverse view of the substance of Mitie's case. Indeed it seems to me that Mitie's second limb and its new third limb are developments of the same area of investigation by Mitie.
57. On the other hand, the Conflict Issue has now been demoted to an also ran.
58. Mitie's application seeks a hearing in June/July 2026. This timetable is intended to arrive at a decision which allows for the Home Office, if unsuccessful, to sign a contract with MTCDD by Autumn 2026. It does not allow for delay caused by a success by Mitie at first instance followed by defeat on appeal to the Court of Appeal, a factual scenario which must be taken into account by this Court.
59. The Home Office comments upon the changes in Mitie's proposals.
60. The Home Office has indicated that in respect of the new third limb, not so far formally pleaded, it will mount a limitation defence.
61. Generally, the Home Office submits that it would be unfair for it to have to participate in a trial in June/July 2026. It suggests that the time estimates put forward by Mitie are unrealistic.
62. It also submits that the two-stage proposal is inappropriate.
63. In my view in this case the application for an expedited trial should be considered in tandem with the Step (2) question as to whether damages are an adequate remedy for Mitie: for the reasons given in the next section of this judgment, I have reached the conclusion that Mitie has failed to establish that damages would be an inadequate remedy if it establishes that the award of the Contract to MTCDD was unlawful.
64. In my judgment, it would be inappropriate to order an expedited trial in circumstances where I have reached that conclusion. If I had reached a different conclusion as to adequacy of damages, then an expedited trial might well have been appropriate, but it has to be said that, given that Mitie is seeking a trial on either of its proposals in June or July of this year, the logistics of arranging such a trial, and producing a judgment, without serious disruption to the work of relevant employees in the Home Office presented formidable challenges.

65. In the circumstances, the application for an expedited trial is dismissed.

Would Damages be an Adequate Remedy for Mitie?

66. Mitie contends that if it is accepted that the procurement was unlawful

damages would not be an adequate remedy for the following reasons:

- (1) The Contract will be the sole contract under which services are provided to support the Home Office in the reception and processing of small boat arrivals for a minimum of six years and potentially for the next decade. The Contract is therefore by design and by its very nature unique and without equivalent, and its award to a competitor would effectively close off this segment of the market to Mitie entirely;
- (2) This is directly comparable to the situation where the failure to be awarded a contract means that an entire undertaking will cease to exist or there will be serious harm which requires complete and detrimental re-organisation of an entity. The fact that Mitie may have other profitable parts of its business does not detract from the fact that by the Home Office's decision Mitie will have been removed from an entire and unique market;
- (3) The loss of a market-consolidating contract of this nature would inevitably erode Mitie's ability to retain the specialist personnel and expertise it currently deploys under the existing contractual arrangements. As a direct consequence, Mitie would be materially disadvantaged in any future competition for the successor contract, whether at the end of the initial six-year term or upon expiry of any extended term;
- (4) The award of the Contract to MTCDC would create an impression in the market that Mitie had been displaced by a competitor with a well-documented record of prior failures in custodial settings involving highly vulnerable individuals. That reputational damage would be compounded by the implication that Mitie was either unable or unwilling to submit a competitive tender;

(5) Given the sensitive and technically demanding nature of the Contract and the challenging environment in which it operates, it will be regarded as a flagship reference contract in the relevant market. A contractor perceived as capable of meeting its exacting requirements will benefit from a significant reputational advantage when competing for other opportunities. This is particularly pertinent given that contracts for the UK's largest Immigration Removal Centres are due to come to market later this year. The loss of the Contract would inflict serious and lasting reputational harm on Mitie while simultaneously conferring a substantial and unwarranted advantage on MTCD. The current contracts held by the MTCD consortium members at WJF and Manston are the only public contracts of note currently on their record. Award of the Contract would provide each consortium member with a flagship reference contract capable of being deployed in every future procurement process for immigration, care, custody, and connected services, whether in the UK or overseas, for the duration of the Contract and beyond. Conversely, absent the Contract, it is unlikely that the MTC members would be able to satisfy the minimum technical experience thresholds required to participate in many, if not all, of the upcoming procurement processes in the sector.

67. In response the Home Office makes a number of points:

- (1) Damages for loss of profit are readily quantifiable;
- (2) Mitie provides no evidence of the loss of annual revenue suffered could not be made up or replaced through Mitie winning other contracts;
- (3) Mitie holds the following contracts: the Home Office Immigration Escorting Contract (providing escorting services and Holding Room/Residential Short-term Holding facilities for immigration detainees), the Campsfield House IRC Operator Service (an immigration removal centre), the Dungavel IRC Management (an immigration removal centre), the Justice Partners Escort and Court Custody contract (for prisoner transport and court custody services), the Police Custody Healthcare (Southwest UK) contract (providing healthcare within police custody suites), the Staffordshire Police FM contract (total facilities management for police stations and secure environments) and the

Home Office TFM contract. Those contracts with the Home Office operate under similar custodial legislation as the Procurement, and are similar to immigration services;

- (4) As to the suggestion that a practical effect of losing the Contract would be that Mitie would not be in a position to retain the specialist expertise and personnel that it currently employs to meet the requirements of this current contract, no evidence has been provided as to what this specialist expertise actually is and which personnel are said to be impacted. It is unclear if any personnel have been or would have to be let go, and no details have been provided about why they could not be utilised with respect to the other contracts Mitie have, or intend to compete for in the near future. This type of assertion falls foul of repeated judicial guidance that such claims need to be properly evidenced;
- (5) As to the suggestion that Mitie will suffer particular reputational harm because it has lost the Contract to MTCO, it does not follow that there would be the reputational harm in the wider market which Mitie claims. This is pure speculation and unevidenced. And, were Mitie to succeed in its claim, any reputational harm it claims it would suffer would be rectified;
- (6) As to the suggestion that the fact that MTCO has been successful in the Procurement and has been awarded the Contract will provide some sort of a “snowball effect”, giving MTCO enhanced prospects of winning future contracts, which it would otherwise not have, no evidence is provided to support this description of how contracting authorities or the market perceive the Contract. No evidence is provided with respect to the likely requirements in future procurements.

68. The burden of proof lies upon Mitie to support the continuation of the automatic suspension. In *Cubic Transportation Systems v Transport for London and another* [2026] EWHC 61 (TCC), I said:

32. In *Openview Security Solutions Ltd v Merton LBC*, Stuart-Smith J. said:

39. What then are the criteria to be applied before a court accepts that “loss of reputation” is a good reason for holding

that damages which would otherwise be adequate are an inadequate remedy for *American Cyanamid* purposes? In the absence of prior authority directly in point (none having been cited by the parties) but with an eye to the approach adopted by the Court in *Alstom, DWF* and *NATS* I suggest the following:

i) Loss of reputation is unlikely to be of consequence when considering the adequacy of damages unless the Court is left with a reasonable degree of confidence that a failure to impose interim relief will lead to financial losses that would be significant and irrecoverable as damages;

ii) It follows that the burden of proof lies upon the party supporting the continuance of the automatic suspension and the standard of proof is that there is (at least) a real prospect of loss that would retrospectively be identifiable as being attributable to the loss of the contract at issue but not recoverable in damages;

iii) The relevant party who must generally be shown to be affected by the loss of reputation is the future provider of profitable work.

40. These are general criteria, which need to be reviewed and considered in the light of the facts of each case. I readily accept that there is more to be said on the subject and that principles such as those I have suggested are not to be applied by rote.

33. I note that paragraph [39(ii)] was said in the context of a submission concerning the impact of loss of reputation in the context of consideration of the issue of adequacy of damages as a remedy for a dissatisfied tenderer, and I note the qualifications in paragraph [40], but I accept that generally the dissatisfied tenderer has the burden of proof in establishing that damages would not be an adequate remedy, firstly because the automatic suspension follows upon a claim made by that tenderer and, secondly, because the relevant facts are likely to be in the tenderer's knowledge.

34. This is also consistent with what O'Farrell J. said in *Bombardier Transportation UK Ltd and others v London Underground Ltd (Siemens Mobility Ltd, interested party)*³:

Each case must be considered on its own facts. In most cases, unsuccessful bids are part of the normal commercial risks taken by a business and will not have any adverse impact apart from potential wasted costs of the tender and lost profits. Not every failed bid will result in damage to reputation causing uncompensatable loss. There must be cogent evidence showing

³ [2018] EWHC 2926 (TCC); 181 ConLR 119 at paragraph [58].

that the loss of reputation alleged would lead to financial losses that would be significant and irrecoverable as damages or very difficult to quantify fairly

35. In my judgment, it follows from what O’Farrell J. said in the second and third sentences of that passage that it is incumbent upon the dissatisfied tenderer to show that its case is not within the category of “most cases”.

69. In the same case, as to the applicable standard the Court should apply in assessing the evidence I said:

36. There was some debate before me, particularly in respect of the loss of reputation issue, as to what standard the Court should apply in assessing this issue.

37. There are cases in which the Court has stated that the applicable question is whether there is “cogent” evidence that the failure to be awarded a disputed contract is a breach in respect of which damages would be an inadequate remedy: see for example the passage from the judgment of O’Farrell J. in *Bombardier* set out above.

38. In *Unipart Group Ltd and another v Supply Chain Coordination Limited*, Constable J. said:

22. The Claimants raise the following points which either separately or in the aggregate, they contend, mean that it is arguable or likely that damages will not be adequate: (1) the prestigious/high value of the project and its impact on reputation/future bids/irreparable harm; (2) the complexity of calculation of loss; (3) that they may be left with no effective remedy if the breaches are found ‘not sufficiently serious’ (the Francovich point). I must consider the first issue as it applies to each Claimant separately, although there will be common themes; the second and third issues apply to each Claimant in the same way and can be considered together.

23. In *Covanta Energy Ltd v Mersey Waste Development Authority* [2013] EWHC 2922 (TCC), Coulson J. (as he then was) summarised the authorities on adequacy of damages:

“(a) If damages are an adequate remedy, that will normally be sufficient to defeat an application for an interim injunction, but that will not always be so (American Cyanamid, Fellowes [v Fisher [1976] 1 QB 122 (CA)], National Bank [v Olint Corp [2009] 1 WLR 1405]);

(b) In more recent times, the simple concept of the adequacy of damages has been modified at least to an

extent, so that the court must assess whether it is just, in all the circumstances, that the claimant be confined to his remedy of damages (as in Evans Marshall [[1973] 1 WLR 349] and the passage from Chitty); ...”

24. When deciding if the claimant should be so confined, the question is whether, if the automatic suspension is lifted, the claimant will arguably or likely suffer a loss for which damages are not an adequate remedy: see Draeger Safety UK Ltd v The London Fire Commissioner [2021] EWHC 2221 at [41], DHL Supply Chain Ltd v The Secretary of State for Health and Social Care [2018] EWHC 2213 at [48] and One Medicare v NHS Northamptonshire ICB at [12] and [15]. This is a question which might be answered with a varying degree of certainty (hence the different language used in some of the authorities). Providing the point is arguable a real one, the threshold has been met to avoid the outcome identified in (a) in the quotation above. However, the degree of certainty may be a factor then to weigh in the overall balancing exercise when considering where the least risk of injustice lies.

39. I accept and adopt Constable J.’s analysis. There is no absolute requirement of “cogent evidence” in this context. However, the further a claim departs from immediately obvious and easily provable losses (such as wasted tender expenses) towards more ephemeral losses (of which loss of reputation may be an example) then the clearer the evidence will need to be to satisfy the Court that there were, or there was a real risk of, such losses.

70. The contentions put forward by Mitie in this case are of a type frequently put forward in procurement cases, and a considerable body of authority has grown up. I was very helpfully taken to a number of those authorities. Among the dicta to be found in the authorities in respect of suggestions of loss of reputation following an unsuccessful tender, I cite the following:

(1) In *Systemex (UK) Limited v Imperial College NHS Trust* Coulson J. (as he then was) said in respect of the issue as to whether an award of damages could have the effect of restoring a reputation which might otherwise be regarded as lost⁴:

“...it is fundamentally wrong in principle to say that an award of damages would not restore a reputation lost because of the rejection of a tender, but the award of the contract itself would. What would matter in those circumstances would be the public acknowledgement that their bid had been wrongly rejected, not

⁴ [2017] EWHC 1824 (TCC) at paragraph [50]

the precise remedy which the court provides in consequence of that finding.”

- (2) In *SRCL Limited v NHS South Yorkshire ICB and others*, Waksman J. said as to the evidence required to establish loss of reputation⁵:

“The above cases show that on the question of reputation, a key question is whether there is cogent evidence of a loss opportunity to enhance reputation along with other benefits. A claim that a bidder’s existing reputation will be damaged if it is unable (because the suspension is lifted) to obtain the contract in question is much more difficult.”

- (3) In *One Medicare t/a One Primary Care LLP v NHS Northamptonshire Integrated Care Board* Jefford J. pulled together the authorities and said⁶:

“45. The threshold for establishing that a company will suffer reputational damage as a result of no more than an unsuccessful bid is a high one. Firstly, for a commercial body, loss of reputation as such is unlikely to mean that damages are not an adequate remedy unless the court can conclude that it will lead to financial loss that is irrecoverable. That was the view of Stuart-Smith J in *Openview Security Solutions Ltd v The London Borough of Merton* at [39]. That is a straightforward proposition because the relevance of reputation to a commercial body is in its contribution to the success of the business. In any event, the very nature of the procurement process involves the premise that the relevant body is seeking the most economically viable tender evaluated against specified criteria. The fact that a bidder, even if an incumbent provider, is not successful does not in and of itself tarnish that company's reputation. If, in due course, the court concludes that it ought to have been awarded the contract, that judgment establishes the rightness of its position. As Coulson J said in *Sysmex (UK) Ltd. v Imperial College Healthcare NHS Trust* [2017] EWHC 1824 (TCC) at [50]: "... it is fundamentally wrong in principle to say that an award of damages would not restore a reputation lost because of the rejection of a tender, but the award of the contract itself would".

“46. As the ICB submitted, it is only in respect of contracts of particular prestige that such an irremediable loss may be regarded by the court as suffered. In *Medequip Assistive Technology Ltd. v The Royal Borough of Kensington* [2022] EWHC 3293 (TCC) at [70]-[75], Eyre J drew together the cases in which the court had found the contract to be so prestigious. *DHL Supply Chain Ltd. v Secretary of State for*

⁵ [2025] EWHC 2964 (TCC) at paragraph [49]

⁶ [2025] EWHC 63 (TCC); 218 ConLR 312 at paragraphs [45] and [46].

Health and Social Care [2018] EWHC 2213 (TCC) is illustrative as a contract for the provision of all medical devices and hospital consumables to the NHS.”

71. In respect of the potential effect of loss of specialist staff, the following dicta are of assistance:

(1) In *Mitie Limited v Secretary of State for Justice*, Sir Antony Edwards-Stuart said⁷:

“... I accept that from time to time valuable employees will be lost when the employer fails to win a new contract or, more probably, the renewal of an existing contract. However, there is no satisfactory evidence before the court to the effect that any current employees have given notice or how many are likely to do so In any event, this is a hazard that is inherent in this type of business.”

(2) In *Medequip Assistive Technology Ltd v the Mayor and Burgesses of the Royal Borough of Kensington and Chelsea*, Eyre J. said⁸:

“Those are the kinds of cases in which the court has held that the loss of specialist staff means that damages are not an adequate remedy for the particular claimant. In both those cases there was a high degree of specialism; and the loss of the staff would have affected the claimant’s continued capacity to perform other contracts or to function at all. It will immediately be noted that those are very different indeed from the circumstances here. Although the Claimant will lose some of its specialist staff the degree of specialism in question is rather less than in those cases. More important the Claimant will retain a number of such specialists and its very existence will not be threatened by the loss of the staff who will transfer to the Interested Party. It cannot credibly be suggested that the loss of staff who will transfer to the Interested Party will mean that the Claimant will be unable to perform the contracts it has for the provision of CES to local authorities in widely disparate parts of the United Kingdom. Accordingly, this is not a case where the Claimant’s loss of specialist staff means that damages will not provide it with an adequate remedy.

72. In this case I am unpersuaded on the evidence that there is a significant risk of Mitie suffering a loss of reputation which cannot be remedied by a decision on the merits of the award of the Contract in due course:

⁷ [2020] EWHC 63 (TCC) at paragraph [59]

⁸ [2022] EWHC 3293 (TCC) at paragraph [99] – the two cases referred to were *Lancashire Care NHS Foundation Trust and another v Lancashire County Council* [2018] EWHC 200 (TCC) and *Counted4 Community Interest Company v Sunderland County Council* [2015] EWHC 38989 (TCC).

- (1) I note the guidance given by Coulson J. in *Sysmex*, set out above;
- (2) Whilst the Contract is, on any view, a substantial and prestigious contract, it would constitute only a limited portion of Mitie's business if awarded to it;
- (3) Mitie remains engaged by the Home Office in a significant number of other substantial contracts;
- (4) There is no evidence of any substance to show how third parties would regard Mitie's failure to win the Contract.

73. I am also unpersuaded that there will be a loss of specialist staff to any significant effect as a result of the failure to win this tender:

- (1) The nature of the services carried out by Mitie in its business generally and to be carried out under the Contract, whilst requiring experience and training, are not at the higher end of a spectrum of specialism such as may be found in engineering or technology contracts;
- (2) The continuing services provided by Mitie under its other existing contracts with the Home Office will require Mitie to retain a specialist workforce using much the same experience and training.

74. Further, I do not accept on the evidence that this is a case where the failure to be awarded the Contract will significantly affect Mitie's ability to win other contracts in future, given Mitie's existing substantial presence in what is a very similar market with the Home Office.

75. For the above reasons, in my judgment Mitie has failed to establish that damages would not be an adequate remedy if it establishes that the award of the Contract to MTCD was unlawful.

Would Damages be an Adequate Remedy for the Home Office?

76. In *Medequip*, Eyre J. said:

“46. The court must next consider whether damages will be an adequate for the defendant if the suspension is maintained in place and the criticisms of the procurement process are ultimately found to be

unmeritorious. By parity of reasoning to that adopted in relation to the preceding question this can be expressed as raising the question of whether it is just to confine the defendant to its claim on the cross-undertaking in damages.

“47. Particular considerations arise when addressing this question in the context of procurement cases where the defendant will be a public body. There will be cases where damages will demonstrably be an adequate remedy even for such a body if the suspension is kept in place and it is precluded from placing the contract in accordance with its procurement process. This will be the position where awarding the contract would mean that the authority was able to obtain particular goods or services at a particular price and where the restraint on awarding the contract means that it has to obtain identical goods or services for a higher price. There, an award in due course of the difference between the two amounts would adequately compensate the authority in question for the inability to place the contract at the lower sum at the earlier time. In such a case the same goods or services will have been obtained during the suspension but at a higher price than would have been the position in the absence of the suspension. There will, however, be circumstances where damages will not be an adequate remedy for a public body. This will potentially be the position where the contract is to provide particular services for the public or to provide those services in a particular way and where the maintenance of the suspension means that for a period of time the services will not be provided or will not be provided in the way desired by the authority. Such an impact on the provision of services by the public body in question will not be measurable in financial terms and damages would not normally be an adequate remedy for a defendant authority in those circumstances (see per Lord Goff in *R v Secretary of State for Transport ex p. Factortame ...*”

77. In any of these procurement cases, on one side of the scale (if it has been held or conceded that there is a serious issue to be tried) is the fact that there is at least an arguable case that the claimant challenging the procurement decision has been deprived of a fair process of significant commercial importance to that claimant, in many of such cases involving millions of pounds.
78. Against that, procurement challenges are capable of causing significant disruption to important activities in the public sector.
79. This case illustrates that dilemma: on the one hand, if the Mitie’s case succeeds, it will have been deprived of a commercial opportunity of great value, albeit that I have decided that damages can adequately remedy the Mitie’s losses.

80. I now consider the other side of the balance. The Court cannot fail to recognise that in current political discourse the problem of immigrants seeking to reach the shores of this country by small boats is, to say the least, an important issue of political concern.

81. In this case, the Home Office submits that its hope is that the Contract will confer substantial benefits:

- (1) A single accountable supplier that is responsible for all the sites involved in processing the initial arrival and entry of Service Users;
- (2) A time and materials staffing model which means that the Home Office only pays for staff provided by suppliers (rather than fixed pricing which has significant overheads if suppliers cannot recruit enough staff). This is underpinned by data where suppliers must track the shift patterns of their staff and evidence this to the Home Office;
- (3) A banded staffing model to enable the Home Office to set bandings up or down depending on arrival volumes predicted in a six-month period. This provides the Home Office more control and means if arrival volumes decrease then the Home Office will not pay to staff for them;
- (4) Emergency uplifts underpinned by rate cards to prevent the supplier increasing prices in an emergency situation as the contract has been built to manage emergencies;
- (5) Performance Management which has been designed for this Contract, rather than adapted from other services. An example of this is requiring a 95% staffing level to be delivered at all times. If the supplier does not staff according to their solution, then the supplier will be charged service credits;
- (6) A partnership approach with the healthcare services provider requiring the supplier, under the healthcare partnership within the Contract, to have a positive and collaborative approach with the healthcare services provider already appointed;
- (7) The Contract contains an innovation schedule with incentivises suppliers to propose methods of reducing cost to the Home Office; and
- (8) The Contract has specific social value mechanisms, in particular related to sustainability and tackling economic inequality.

82. At this interlocutory stage I cannot assess whether the Contract will actually confer all these benefits. However, I can and do decide that the Home Office believes that the Contract will confer these benefits.

83. Importantly in the present circumstances, I record and accept that the Home Office values these benefits and wishes to implement them as soon as follows. I also accept that a delay in the implementation of these benefits cannot be remedied by the payment of a financial sum to the Home Office.

Balance of Convenience

84. Having decided that damages would be an adequate remedy for Mitie if it establishes that the award of the Contract, and, conversely, that if Mitie's claim is held to be unmeritorious damages pursuant to the usual cross-undertaking would not be an adequate remedy for the Home Office, there can be no conclusion other than that the suspension should be lifted. That is the Order of this Court.

Conclusion

85. Accordingly, the Home Office's application to lift the suspension succeeds. Mitie's application for an expedited trial is dismissed.

Approved Judgment

Mitie Care and Custody v Secretary of State for the Home
Department