

BLACKPOOL AND FLYDE AERO CLUB LTD V BLACKPOOL BOROUGH COUNCIL [1990] 3 ALL ER 25

Court of Appeal (UK) – 25 May 1990

FACTS

The council operated an airport and decided to request tenders for a concession to operate pleasure flights from an airport.

Invitations to tender were sent to selected parties connected with the airport. Only three chose to tender.

The Invitation to Tender required tenders to be submitted by 12 noon on 17 March 1983. The Plaintiff's tender was placed in the tender box at 11 am 17 March. The Tender box was not properly cleared by Council staff. As a result, the tender was recorded as being received late and was not considered. The Plaintiff sought damages for breach of contract, contending that there was a warranty that if the tender was received by the deadline it would be considered.

The trial judge held that an express request for a tender might in appropriate circumstances give rise to an implied obligation to consider that tender. The Council appealed to the court of appeal.

ISSUES

Could an express request for tenders give rise to an implied contractual obligation for the party calling tenders to consider tenders duly received.

FINDING

An invitation to tender is usually an offer to receive bids, however circumstances could arise whereby the invitation gave rise to binding contractual obligations. Although the Council's form of tender did not explicitly state that they would consider timely and conforming tenders, and although contractual obligations were not to be lightly implied, an examination of what the parties said and did established a clear intention to create a contractual obligation with the Council to consider the plaintiff's tender in conjunction with all other conforming tenders. Council had breached this contractual obligation.

QUOTE

Bingham LJ said:

“whereas here, tenders are solicited from selected parties, all of them known to the inviter, and where a local authority's invitation prescribes a clear, orderly and familiar procedure- draft contract conditions available for inspection and plainly not open to negotiation, a prescribed common form of tender, the supply of envelopes designed to preserve the absolute anonymity of tenderers and clearly to identify the tenders in question, and an absolute deadline, the invitee is in my judgment protected at least to this extent: if he (or she) submits a conforming tender before the deadline he is entitled, not as a matter of mere expectation but of contractual right, to be sure that his tender will after the deadline be opened and

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

considered in conjunction with all other conforming tenders or at least that his (or her) tender will be considered if others are”.

“It is of course true that the invitation to tender does not explicitly state that the council will consider timely and conforming tenders. That is why one is concerned with implication. But the Council do not either say that they do not bind themselves to do so and in the context a reasonable invitee would understand the invitation to be saying, quite clearly, that if he submitted a timely and conforming tender it would be considered, at least if any other such tender were considered”.

IMPACT

A person calling for tenders should clearly outline the terms on which they will consider these tenders.

In the absence of express conditions to the contrary the Courts may imply a duty for the person requesting to consider all tenders put before them. Tenderers will have at least the right to have their tenders considered, if they comply with the conditions imposed by the person seeking tenders.

© Doyles Construction Lawyers 2015

This publication is intended to be a report on recent cases in the construction, development and engineering industries. This publication is not intended to be a substitute for professional advice, and no liability is accepted. This publication may be reproduced with full acknowledgement.

Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com