

PRATT CONTRACTORS LTD V PALMERSTON NORTH CITY COUNCIL [1995] 1 NZLR 469

High Court of New Zealand – 13 December 1994

FACTS

The defendant council had called for tenders for the construction of a flyover. The tenderers had to pre-register and to pay a non-refundable \$100 deposit. When lodging a tender, each tenderer had to pass an evaluation. The tender to be accepted would be the lowest price tenderer.

Pratt was the lowest price tenderer but was not successful. Pratt therefore issued proceedings against the Council.

ISSUES

Was there a contract between Pratt and the Council that when the tender was submitted, and it complied with the tender conditions specified by Council then the lowest price tenderer would be successful?

FINDING

Pratt had established that a contract had arisen between Council and itself when it submitted the tender which had been in conformity with the requirements of the defendant.

This was not a situation where there had been a mere calling for tenders and nothing more and the requirement to register, and the extensive, detailed and substantial tender documents were evidence that contractual relations were intended. In selecting a particular tender, the Council had to award the contract to the lowest price tenderer.

QUOTE

Gallen J said:

“The question to be asked in this case then is ... did the parties intend to create contractual relations with respect to the submission of the tender? ... There are in this case a number of considerations which lead me to the conclusion that the parties did so intend.

First, this was not a situation where there was a mere calling for tenders and nothing more. The first advertisement requested contractors to register their interest for the construction of the project. In order to tender at all, interested contractors had to register their interest and pay a \$100 non-refundable deposit before they received the tender documents for consideration. The actual submission of a tender was therefore contemplated as a second step and moreover, one which followed upon a declaration of interest backed by a non-refundable deposit. This is I think a significant point.

Secondly, the tender documents were extensive, detailed and substantial. They set out not only the nature of the project contemplated, supported by detailed specifications and drawings, but also set out the conditions of contract which would apply if a construction contract were entered into” – page 479 of [1995] 1 NZLR

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469 “That indicates in detail the precise way in which the council will evaluate tenders and indicates in mandatory terms, the basis on which a contract will be entered into. If that is to impose obligations upon the council so that it is required to act in accordance with its indicated intention, then of course it may become binding in a number of ways” – page 480 of [1995] 1 NZLR 469

IMPACT

A person inviting or submitting tenders may be found to have entered into preliminary contracts with the expectation that tendering will lead to a second or principal contract. Parties inviting tenders should carefully note the implication of the wording inviting tenders.

The more detailed and complex the tendering process the more likely that these preliminary contracts will be found to exist.

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