

Know Your Tender Process

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In all areas of the private sector companies set up or respond to invitations for works, supplies or services, but how many realise that by setting a tender or responding to an invitation to tender that they are actually entering into a contractual relationship?

More often than not clients will instruct a professional, most likely an Architect or a Quantity Surveyor, to set and oversee the tender process. Given the complexities of a tender process a great deal of time and money will go into drafting the tender documentation. It would therefore seem a logical step that the tender process should be followed.

In this area of law the leading authority is a Northern Ireland case, decided by Sir Liam McCollum in the High Court for Northern Ireland. The case is *JA Developments v Edina Manufacturing, Armoura Ltd and others* [2006] NIQB 85.

This case confirms the principle that an invitation to tender is an offer and that a tender submission is acceptance of the offer. The consideration to form the contract is the time and money spent by tenderers in preparing their tender submission. The case also confirms that the contract between the client and the tenderers is that the tender process shall be followed. On finding that the tender process has not been followed the Judge goes on to award damages to one of the tenderers for loss of profits.

Clients should be aware of what their tender process entails and what steps have to be taken to ensure that it is followed. Once the tender process is opened every care should be taken to ensure that the tender process is followed. If for some reason the process cannot be followed, the client should make every effort to ensure that all tenderers are treated fairly. In some instances this may mean that the tender process is closed with no award being made and a fresh tender being issued, while in other cases this may mean simply advising all the tenderers of the change.

Professionals should also be aware of the importance of adhering to the tender process and advise clients appropriately. The case noted above clearly demonstrates that professionals not advising clients appropriately may be open to a claim against them for professional negligence.

This item is a brief outline of the legal issues arising and is not intended to provide a comprehensive or detailed statement of the law. Specific legal advice should be sought on the circumstances of a particular case.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.