



## A Tender Process

Most businesses come across the tendering process for the winning of contracts at some stage whether they are awarding or seeking to be awarded contracts. Recently the BBC very publicly suffered the loss of a tender process for a four year multi million pound contract to screen FA Cup and England matches.

Those involved in public procurement need to be well versed in the regulations imposed by not only national legislation but also European Procurement Directives and, in particular, the recently introduced Public Contracts Regulations 2006. However whilst such regulations might not apply to the conduct of the tendering process in private industry, problems can occur if procedures are not adhered to as highlighted recently in a High Court action in Belfast.

In the case in question a local developer put out to tender a contract to construct a building. The conditions of the tender were set out in the document which contained the statement that the "tendering process will be in accordance with the principles of the Code of Procedure for single stage selective tendering 1996". The plaintiff tendered and was the lowest bidder. The developer then conducted meetings with the three lowest bidders at which they were invited to reduce their tender prices. There was no reduction in specification and the contract was awarded to another tenderer who reduced his price. The plaintiff refused to reduce his price on the basis that the specification had not altered.

The Judge held that the Code of Procedure was contractually binding on the developer and by failing to comply with the procedures contained in the code the developer was in breach of contract. The unsuccessful tenderer was awarded £135,528 in damages on the basis of loss of profit had the contract been awarded to him and the costs incurred in preparing his tender. The Judge held that if the tender documents had not contained the clause referring to the application of the code of procedure the outcome of the case might have been different. The case is currently the subject of appeal proceedings.

The message is clear. Those involved in similar circumstances should avail of legal advice.

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