



LEGAL BRIEFING

Mears Ltd v Leeds City Council

[2011] EWHC 40 (QB), Mr Justice Ramsey

The Facts

Mears brought a claim concerning the public procurement by Leeds City Council ('Leeds') in respect of refurbishment works for social housing. During the procurement process, after the deadline for the submission of certain "Outline Solutions Submissions (Quality and Cost)" had closed and after all tenderers had been received, Leeds issued a clarification by letter dated 14 May 2010 to all the tenderers. The letter required that tenderers take into account certain new information. By letter on 18 May 2010 Mears resubmitted its revised pricing. On 2 July 2010 Leeds informed Mears that it had been unsuccessful.

After further correspondence, Mears issued proceedings on 12 October 2010. Leeds submitted that Mears were in breach of Regulation 47(7)(b) in failing to bring these proceedings within 3 months of 14 May 2010 or, at the latest, 18 May 2010 and that there are no good reasons for extending the period. It was accepted that what was needed was knowledge of the infringement and not knowledge of the loss; however, Mears said that the date of infringement was when its answers to the PQQ were alleged to have been unfairly evaluated.

The Issue

Did Mears fail to commence proceedings within 3 months of "the date when grounds for the bringing of the proceedings first arose", as required by Regulation 47(7)(b) of the Public Contracts Regulations 2006 ('the Regulations')?

The Decision

Mr. Justice Ramsey took the view that it was necessary to analyse the relevant breach or infringement of the Regulations. He summarised previous case law as follows:

- (i) *The "date when grounds for the bringing of the proceedings first arose" will depend on the nature of the claim in the proceedings.*
- (ii) *The grounds for making certain claims may arise before there has been any decision to eliminate a tenderer from the procurement process or not to award a contract to a tenderer.*
- (iii) *Where the claim is based on infringement of the Regulations occurring during the procurement procedure and before any decision has been taken to eliminate a tenderer or award a contract to another tenderer, the date when the grounds arise will depend on when the claimant knew or ought to have known of that infringement.*
- (iv) *Where a claimant knows or ought to know of the infringement, the grounds for bringing the proceedings will then arise. They do not arise only when there has been a decision to eliminate a tenderer or award a contract to another tenderer.*
- (v) *Where the claim is based on grounds which arise out of a decision to eliminate a tenderer or award a contract to another tenderer then those grounds will only arise when the tenderer knew or ought to have known of the infringement and this will generally depend on the tenderer being given the reasons for the decision.*

(vi) *The requirement of knowledge is based on the principle that a tenderer should be in a position to make an informed view as to whether there has been an infringement for which it is appropriate to bring proceedings. There is not a separate requirement relating to the appropriateness of bringing proceedings.*

Therefore here, it was clear that Mears had full knowledge of both the contents of the letter of 14 May 2010 and the time allowed to respond. By the time the period given in the letter of 14 May 2010 had expired, that is, at the latest, 18 May 2010, Mears had sufficient knowledge to take an informed view as to whether there had been an infringement of the Regulations for which it was appropriate to bring proceedings. Therefore the allegations relating to the May letter were brought out of time.

Comment

Here, Mr Justice Ramsey provided clear guidance as to the meaning of the phrase “*the date when grounds for the bringing of the proceedings first arose*” in Regulation 47(7)(b). Accordingly, parties within a public tendering process must be alert to the date of any infringement and be proactive in commencing proceedings within 3 months of that date. Failure to do so may well result in the claim being struck out, as was the case here.

Stacy Sinclair
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