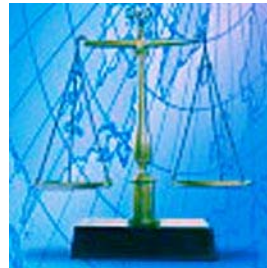




ADDLESHAW GODDARD

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PROCUREMENT TEAM E-ALERT



Lion v Firebuy (Chancery Division, 27th September 2007)

This significant case involved the national purchase of uniforms for fire fighters. A disgruntled bidder called Lion Apparel Systems Limited (Lion) went to Court seeking an interim injunction to stop the award of a contract to the winning bidder, and raised a number of grounds of complaint.

Lion failed to obtain an injunction, but the Court came close to granting the injunction in relation to Lion's best argument, which related to bid evaluation. Specifically, even though the Court found that the evaluation criteria were declared in advance, that the correct weightings were applied and that there was no change in the weightings applied, it seemed that the Court would in appropriate circumstances have been prepared to accept that the detailed methodology for evaluation may give rise to a course of action.

Some interesting points:

- The Court will only disturb the contracting authority's decision where it has committed a "manifest" or fundamental error, but that where the general principles of community law, requiring the contracting authority to act in a fair, equal and non-discriminatory way, are infringed, there is no "margin of appreciation" or discretion on the part of the contracting authority.
- The principles established in the *Holleran* case, requiring complainants to bring their action extremely swiftly, apply even to bidders in the midst of the bid process at the time they become aware of the ground for complaint.
- Failures by the contracting authority which do not affect the ultimate outcome of the competition will be disregarded.
- There appears to be no objection to providing bidders with uniform but different feedback which should mean that contracting authorities are not prevented from raising different problem issues with different bidders, so long as this is done in a uniform way.
- There is discretion, at least where the PQQ or ITN documentation allow, for instance, not to disqualify bidders where grounds for their disqualification exist.

One striking feature of the case is the extent to which the well documented audit train maintained by Firebuy enabled them to defeat Lion's principal arguments. On the other hand, it was largely the fact that Lion was provided with a significant amount of information regarding the process (seemingly as part of debriefing), which enabled it to come up with so many detailed grounds for the complaint.

There are a number of important points in this case which might encourage private sector challenges. The case also acts as a reminder to contracting authorities that there is no substitute for rigorous processes and good record keeping.

If you would like to see a full copy of the Judgment, or to receive a copy of Addleshaw Goddard's detailed briefing note on this case, please contact:

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