



Maple Ridge Towing v. Districts of Maple Ridge and Pitt Meadows 2001 B.C.S.C. 1328 (Maczko J.)

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Summary

A party issuing a request for proposals ("RFP") may be able to avoid the formation of Contract 'A' by the inclusion of the following language within the RFP:

"[the requesting party] shall not be obligated in any manner to any Proponent whatsoever until a written agreement has been duly executed relating to an approved proposal".

Comment

The Corporation of the District of Maple Ridge and the Corporation of the District of Pitt Meadows (the "Districts") issued an RFP with respect to their towing work. In response to the RFP, Maple Ridge Towing ("MRT") and Aggressive Towing Ltd. ("Aggressive") submitted bids for the work. The Contract was awarded to Aggressive, and MRT sued the Districts for breach of contract and negligent misrepresentation.

MRT alleged that upon submission of its bid, a contract came into existence between MRT and the Districts requiring that the Districts act objectively, fairly and in good faith ("Contract 'A'") and that the Districts breached this contract by accepting a 'non-compliant' bid submitted by Aggressive.

The Court considered, in *obiter*, whether on the facts of this case, Contract 'A' was formed between MRT and the Districts. The Court referred to the



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decision in *M.J.B. Enterprises Ltd. v. Defence Construction (1951) Ltd.* [1999] 1 S.C.R. 619 at p. 632, noting that the formation of Contract 'A' is dependent on the intentions of the parties, before going on to refer to cl. 9.1 of the RFP which states:

"The District of Maple Ridge and the District of Pitt Meadows shall not be obligated in any manner to any Proponent whatsoever until a written agreement has been duly executed relating to an approved proposal."

The Court held, at paragraph 17, "Clause 9.1 shows a clear intention on the part of the District of Maple Ridge and the District of Pitt Meadows not to be contractually bound as a result of the RFP process." As a result, no Contract 'A' was formed, and MRT could not establish a breach of contract.

It would appear that a party preparing an RFP can avoid the formation of Contract 'A' by the inclusion of the language referred to above. However, this decision does not consider the impact of such a provision in the tendering process. If no Contract 'A' is formed, then is there any binding obligation on the bidders to leave their bids open for a specified period of time, and for the accepted bidder to enter into Contract 'B' upon acceptance of its bid?

Without the structure provided by the Contract 'A' / Contract 'B' process, a requesting party may find that the "accepted bidder" will seek to negotiate a higher price for the work.

The long term impact of this decision is uncertain, but it may be that in many cases the benefits to the requesting party will be outweighed by the loss of the current structure of the tendering process.