



JB LEADBITTER & CO LIMITED CASE STUDY

JB LEADBITTER & CO LIMITED
V
DEVON COUNTY COUNCIL



*This case study will be considered
within the following PASS Training Courses*

Writing a Tender Specification



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JB Leadbitter & Co Limited v Devon County Council

If a supplier submits its tender late because of its own mistake, is a buyer allowed to reject it?

Devon County Council (DCC) sent an invitation to tender (ITT) for a framework agreement to JB Leadbitter & Co Limited (Leadbitter). The ITT was clear on the deadline and method of submission of tenders. Leadbitter failed to upload the whole tender to the secure portal and realised its error 15 minutes before the deadline, but was unable to add the missing case studies as only one upload was allowed. Leadbitter emailed the case studies shortly after the deadline hoping they would still be considered. The tender was rejected as incomplete.

On the morning of the deadline another tenderer suffered a power cut and DCC extended the deadline for all by three hours. Leadbitter claimed it was unequal and discriminatory not to allow it to send its case studies by email, because the deadline was extended and another bidder had been allowed to submit its tender in a sealed envelope in hard copy as a backup to the uploaded version.

The court said as the power cut had been outside the tenderer's control, it was not comparable with Leadbitter's mistake. Unlike Leadbitter's email, the delivery of the hard copy tender had been within the deadline.

Furthermore by sending the case studies via email Leadbitter failed to preserve the level of security of a secure portal or sealed envelope. A concern over collusion by staff was one of the reasons DCC had specified these secure methods of delivery.

Leadbitter argued it should have been allowed to correct its mistake as the ITT permitted rectification of "errors". The court did not agree because if most of the tender could be submitted at a later date as an "error" there would be no point in having a deadline for submission.

Leadbitter also said DCC had a duty to act proportionately. The court agreed this duty applied but there would have to be exceptional circumstances, such as fault on the authority's part, for this to require the acceptance of a late tender. DCC had a discretion to accept late tenders but the deadline, method of submission and that tenders could only be submitted once had been made clear. DCC was well within its discretion to reject the tender. Not to do so would have been unfair to the other firms who submitted theirs on time.

What this means

The courts continue to be cautious about imposing general public law concepts and standards to authorities' commercial activities.

Contracting authorities are permitted to set strict deadlines and methods for the submission of tenders and where tenderers fail to meet these, even as a result of a genuine mistake, there is no obligation on the contracting authority to accept the tender.

The duty to act proportionately is unlikely to impose any duty to accept a non-compliant tender unless there are exceptional circumstances, such as a fault by the authority itself. Contractors therefore need to be extremely careful, when submitting tenders, to meet specified deadlines and use the prescribed methods of submission if they want to avoid having their tender rejected.

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