

“LETTER OF ACCEPTANCE/ AWARD” AS AN UNQUALIFIED ACCEPTANCE

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ABSTRACT

Offer and acceptance are basic elements in establishing contract and an acceptance must be absolute and unqualified. In construction industry, tender is an offer and “Letter of Acceptance/ Award” is a formal acceptance of the tender. In the current practice, although the “Letter of Acceptance/ Award” is issued, formal contract is still required to be signed. There is always delay in signing the formal contract and therefore the “Letter of Acceptance/ Award” will form the basis of the rights and obligations between the parties. It is a bad practice that contractor commences work before the contract is signed or sealed and therefore he is necessary to check whether a binding contract is in existence. Contractor must make sure that the “Letter of Acceptance/ Award” issued by the client can constitute as an unqualified acceptance because without an unqualified acceptance takes place, there will be no contract exists. Originally, “Letter of Acceptance/ Award” is a true and unqualified legal acceptance of the tender. As a result of no standard format in drafting the “Letter of Acceptance/ Award” and client likes to insert new terms into the said letter, the “Letter of Acceptance/ Award” sometimes cannot act as an unqualified acceptance. Hence, this research intends to identify whether “Letter of Acceptance/ Award” can act as an unqualified acceptance and it was found out that the said letter not only acted as an unqualified acceptance, but sometimes also can be a counter-offer, an appointment and even did not have any binding effect. Although different labels, “Letter of Acceptance” and “Letter of Award” were used as acceptance document, the “award” from a client to a contractor brought the same meaning as an “acceptance” by the client because the legal effect of such letter depend entirely upon its contents and not its mere labelling.

ABSTRAK

'Tawaran dan Penerimaan' adalah element asas bagi pembentukan kontrak dan penerimaan mesti tepat and tidak bersyarat. Dalam industri binaan, tender adalah tawaran dan "Surat Setujuterima/ Award" adalah penerimaan. Walaupun "Surat Setujuterima/ Award" telah dikeluarkan, kontrak rasmi masih diperlukan untuk ditandatangani. Penungguan selalu berlaku dalam menandatangani kontrak rasmi dan oleh yang demikian, "Surat Setujuterima/ Award" akan membentuk hak dan kewajipan antara dua pihak. Ini adalah perkara yang tidak baik untuk dipraktikkan di mana kontraktor mula bekerja sebelum kontrak wujud. Kontraktor perlu memastikan bahawa "Surat Setujuterima/ Award" yang dikeluarkan oleh klien adalah penerimaan tidak bersyarat kerana tanpa penerimaan tidak bersyarat, tidak ada kontrak wujud. Pada asasnya, "Surat Setujuterima/ Award" adalah penerimaan rasmi tidak bersyarat. Tanpa kewujudan format piawai dalam mendrafkan "Surat Setujuterima/ Award" dan klien suka memasukkan syarat-syarat baru ke dalam surat tersebut, "Surat Setujuterima/ Award" kadang-kala tidak boleh dianggap sebagai penerimaan tidak bersyarat. Oleh itu, penyelidikan ini adalah bertujuan untuk mengenalpasti samaada "Surat Setujuterima/ Award" adalah penerimaan tidak bersyarat dan adalah didapati bahawa surat tersebut bukan sahaja sebagai penerimaan tidak bersyarat, malah surat tersebut boleh menjadi tawaran balasan, pelantikan, dan tidak dapat dijadikan sebagai penerimaan yang sempurna. Walaupun nama yang berbeza seperti "Surat Setujuterima" dan "Surat Award" telah digunakan sebagai dokumen penerimaan, didapati bahawa "award" daripada klien kepada kontraktor mempunyai makna yang sama dengan "penerimaan" oleh klien kerana pengaruh sah terhadap surat tersebut terpulang kepada kandungan dan bukan nama dokumennya.