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Who Can Sign a Tender?

This should be a straightforward question, but tender packages are all too often packed with pages of complex, interminable instructions to cover every possible contingency. If the tenderer is a natural person... If the tenderer is a corporation... If the tenderer is a partnership... If the tenderer is a company with no establishment in Québec...

It may require certified copies of resolutions, or proxies signed by all associates. Sometimes all that's missing is a wax seal or the signatory's thumbprint, just in case...

These complexities are entirely unnecessary, and only serve to discourage tenderers by wasting time and energy on formalities that have nothing to do with providing the lowest price. Not to mention the additional risk of a tender being considered irregular simply because it's missing some of the supporting documents for the signature.

The *Civil Code of Québec* simply states the following:

2827. "A signature is the affixing by a person, to a writing, of his name or a mark distinctive to him which he regularly uses to signify his consent."

When the signatory is a mandatary

When a person signs a tender on behalf of someone else, such as an employee or director representing a company, the general rules of mandate apply:

2130. "Mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power."

2132. "Acceptance of a mandate may be express or tacit. Tacit acceptance may be inferred from the acts and even from the silence of the mandatary."

2160. "A mandator is liable to third persons for the acts performed by the mandatary in the performance and within the limits of his mandate unless, under the agreement or by virtue of usage, the mandatary alone is liable."

The mandator is also liable for any acts which exceeded the limits of the mandate, if he has ratified them."

Under this definition, when a company entrusts one of its representatives with the responsibility of preparing a tender in response to a call for tenders, it is considered a mandate, and the mandatary who signs the tender documents will simply be binding the company they represent.

Authority to sign

How was this mandate given and by whom? Who had the authority to do so? As a tender manager, this is not really your concern.

Unlike municipalities and other public bodies, which have to follow strict rules to enter into contracts, private companies are subject to the "indoor management" rule.

This common-law rule means that anyone dealing with a company or corporation can assume that its internal rules and policies have been followed.

Therefore, if a person represents themselves as having the authority to sign a tender and bind a company, the municipal body is within its rights to take them at their word without further investigation.

Moreover, the indoor management rule dovetails with the mandate rules: not only does it exempt third parties acting in good faith from checking whether internal formalities have been followed, it also prevents the company from claiming that they have not.

This means that it's not necessary to know how or by whom the representative was authorized to sign, and even less so to demand proof through resolutions, proxies, minutes, and other superfluous documents. By blindly including requirements like these in your tender package, you needlessly complicate your work and that of your tenderers.

No imposters

To the best of our knowledge, in Québec, there are no imposters ordering tender packages and filling out dozens—if not hundreds—of pages in order to submit a tender on behalf of a company they do not actually represent.

Given this, simply requiring the tender to be signed by an authorized representative of the tenderer should suffice to form a valid contract if the tender is accepted. Everything else is unnecessary.

Simplicity

In the same vein, we could also question the number of signatures required on tender documents.

Sign here, initial below, sign again here and there. Some municipalities ask for signatures in several places on the same page. Why? Every additional requirement creates an exponential risk of oversight, and inevitably, of questions about the validity of the tender.

With the exception of the tender form and the declaration required to comply with the contract management by-law, there is simply no need to require a multitude of signatures in a tender package.

Finally, when a signature is required, it's important to put the line at the bottom of the page, clearly indicate it, and leave enough space, rather than cramming a small box between two lines of text, where they can easily go unnoticed by the signatory.

In short, the best advice we can give is to keep things simple!



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