



CAIN LAMARRE CASGRAIN WELLS

S.E.N.C.R.L. / AVOCATS

PROS AND CONS OF A JOINT VENTURE AND/OR PARTNERSHIP AGREEMENT

Me Natacha Leclerc and Me Pascal Porlier

November 8, 2012



CAIN LAMARRE CASGRAIN WELLS

S.E.N.C.R.L. / AVOCATS

THE RIGHT PARTNER

- Expertise
- Experience
- Training and other opportunities for First Nations
- Common goals and vision
- Cultural differences



LEGAL STRUCTURE

- Corporation vs. partnership
- Partnerships
 - General partnership
 - Limited partnership
 - Undeclared partnership
 - Joint venture





CAIN LAMARRE CASGRAIN WELLS

S.E.N.C.R.L. / AVOCATS

LEGAL ASPECTS OF CONSTRUCTION PROJECTS

**Me Natacha Leclerc and Me Pascal Porlier
Mme Audrey-Ann Voyer**

November 8, 2012



CAIN LAMARRE CASGRAIN WELLS

S.E.N.C.R.L. / AVOCATS

LEGAL VALIDITY OF TENDERS



CAIN LAMARRE CASGRAIN WELLS
S.E.N.C.R.L. / AVOCATS

- **The tender is an offer to contract;**
 - **It is not a contract but a promise to enter into a contract which binds the offeror (1388 C.c.Q.);**
 - **The offer must be maintained (terms/delays);**
 - **Rules must be respected;**
 - **Equity and equality between tenders;**
 - **Importance of good faith;**
 - **Irrevocable status of tenders;**
- **AXOR case**



ELIGIBILITY AND WITHDRAWAL OF A TENDER



Qualification

- **Importance that statements be exact**
 - *B.T.F. v. Immobilière*: Inaccurate information regarding the content of qualifications constitute a major irregularity
 - *Double N case*: Presumption of authenticity of the content of a tender

- **Importance of certain statements**
 - *Genivar-Dessau v. Attorney General of Québec*: Declaration regarding communications with another party in the context of anti-collusion terms



Competence

- **Obligation to possess appropriate permits;**
 - *Les Constructions Bé-con v. Attorney General of Canada:*
Where the type of license held is inappropriate, said irregularity affects an essential element rendering the tender invalid



Partnerships

- **Qualification of each member;**
 - *Terkon Contractor Case*
 - The province could not go back on established terms
 - Breach of the duty of fairness



Withdrawal

- **Before acceptance**

Article 1390 al.2 C.c.Q.: When a term is attached, the offer may not be revoked before the term expires; if none is attached, the offer may be revoked at any time before acceptance is received by the offeror.

Article 1391 C.c.Q.: Where the offeree receives a revocation before the offer lapses, even though a term is attached to it.

Article 1392 al.1 C.c.Q.: An offer lapses if no acceptance is received by the offeror before the expiry of the specified term or, where no term is specified, before the expiry of a reasonable time; it also lapses in respect of the offeree if he has rejected it.

- **After acceptance = irrevocable**



ERROR



- **Error, rendering a tender nul and void;**
general civil laws: *art. 1398 ss C.c.Q.* pertaining to consent
- **Financial error; inexcusable error !**
Ron Engineering case
A mistake in the amount of the tender cannot be used to adjust or cancel a bid.
- **Error on the object of the tender;**

The onus of proof is on person that submitted the bid



MAJOR AND MINOR IRREGULARITIES



Minor Irregularities

- Unsigned tender bid – material irregularity
- Absence of a resolution
- Use of subcontractors
- No on-site visit
- Other irregularities in the form



Major Irregularities: Important or Essential Element

- Late submission of tender bid
 - *Entreprises Jacques Dufour v. Attorney general of Qc*
- Fraudulent tender bid
 - *Construction Bé-con Case*
- Absence of subcontractor list
- Absence of required financial security
- Breach of law and order
- Failure to respect addendums
- Any amendment having an impact on the price



- Qualification:
Same rule applies as with respect to conformity
 - *Demix v. AG Quebec:*

- Equivalences
 - *Hervé Pomerleau v. S.T.M.*



PRESUMPTION OF AUTHENTICITY



Respect of essential terms

- Definition

- *ED Brunet v. Des Draveurs School Board:*

- The obligation to visit the site was not an essential term that could invalidate a tender.



Tendering processes vs contract

- Distinct obligations
- Tendering processes: no obligation to grant a contract

Obligation to investigate the author of the tender

➤ *Double N case:*

- There is no obligation to investigate whether the content of a tender is current and correct.



Power of the Courts

Declare a process nul and void

- *B.T.F. case*
- *Service informatique SYM v. Corporation d'approvisionnement des Deux Rives*
- *Groupe Bio Services v. City of Terrebonne*



DISCRETION OF THE CLIENT



The right of the Client not to accept the lowest tender or to refuse all tenders

➤ *M.J.B. Enterprise case*

- Valid reason
 - Excessive price
 - Decision to modify the product or required service
 - Additional guarantees
 - Ambiguity in documents submitted by the client creating confusion in bids
 - Decision to carry out labour or work
- Invalid reason
 - Process with the intention of not awarding a contract
 - Process to obtain a lower price from a third party
 - To dismiss the lowest bidders

(E.D. Brunet v. C.H.V.O.)



Bids must be treated equally, equitably and in good faith

- Transparent procedure
- Reasonability



CONTRACT BY MUTUAL AGREEMENT



Public Contracts

Federal Law

- *Financial Administration Act;*
- Government Contracts Regulations;
- *Department of Public Works and Government Services Act;*



Public Contracts

In Québec

- *An Act Respecting Contracting by Public Bodies*
- Regulation respecting supply contracts of public bodies
- Regulation respecting service contracts of public bodies
- Regulation respecting construction contracts of public bodies
- *Bill 76*
- *Bill 102*



A) Public Contracts

Municipal

- Municipal Court of Québec *Cities and Towns Act*
 - *Selection committee:*
 - *Composition*
 - *mandate*
- *An Act Respecting the Communauté Métropolitaine de Québec*
- *An Act Respecting the Communauté Métropolitaine de Montréal*
- *An Act Respecting Public Transit Authorities*



DUTY TO ACT IN GOOD FAITH



Important issues to take into consideration

- Identification of the product or service
- Essential terms and conditions
- Qualifications that limit the number of bidders
- Territorial or other necessary terms
- Mutual agreements rather than tenders
- Essential terms versus subsidiary elements
- Addendums
- Equitable treatment



ALTERNATE DISPUTE RESOLUTION



CAIN LAMARRE CASGRAIN WELLS
S.E.N.C.R.L. / AVOCATS