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OUR CONDO EXPERTISE

GUIDE TO TENDERING

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GUIDE TO TENDERING

This guide provides practical information for condominium directors and condominium managers about the tendering process for condominium corporations in Ontario.

Proposed amendments to the Condominium Act, 1998 (the “Act”) will impose the requirement for condominium corporations to engage in the tender/procurement process prior to entering into certain contracts.

WHAT IS TENDERING?

Tendering, also known as procurement or the tendering process, is a method used to acquire goods, works or services from external suppliers or contractors. It is a formal and structured process that ensures transparency, fairness, and competition in the selection of suppliers or contractors.

The tender process is a practice where buyers invite multiple sellers to submit offers for a good or service, as opposed to purchasing a service directly from a seller.

THE PRIMARY GOALS

The primary goals of the tendering or procurement process are:

1. to obtain highly competitive pricing by having each seller compete with one another to submit the best bid;
2. to maintain integrity in the selection process; and
3. to ensure that the chosen supplier or contractor meets the condominium corporation’s specific requirements and needs.



STEP 1: IDENTIFYING THE NEED

The board of directors, condominium manager, and project consultants (engineer etc.) need to identify the required work or service.

STEP 2: ISSUING THE TENDER

Condominium corporations will issue a Request for Proposal (“RFP”), also known as an Invitation to Bid, which will include the requirements of the project and instructions for the bidders. Additionally, condominium corporations will request companies that may be interested to submit proposals for the specified work.

STEP 3: THE PROCESS CONTRACT (“CONTRACT A”)

When a tender is issued and a bidder submits a compliant bid, there is a process contract between the condominium corporation and each compliant bidder.

The terms outlined in Contract A are in the instructions to the bidders found in the RFP. Under Contract A, a condominium corporation has a duty to act in good faith and must treat each compliant bidder in a fair manner.

The use of Contract A is dependent on the language in the RFP and the intent of the parties. A compliant bidder treated unfairly may have recourse against a condominium corporation. In some instances, compliant bidders have sought legal recourse and were awarded their lost profits on contracts where they were not treated fairly during the tender process.



STEP 4: THE PERFORMANCE CONTRACT (“CONTRACT B”)

The performance contract is the final step in the tender process. Once all compliant bids are received, the condominium corporation will then select the winning bid and enter into a specific contract with that company. The performance contract is the contract entered into with the winning bidder upon acceptance of that bid. The performance contract is only formed between the condominium corporation and successful bidder.

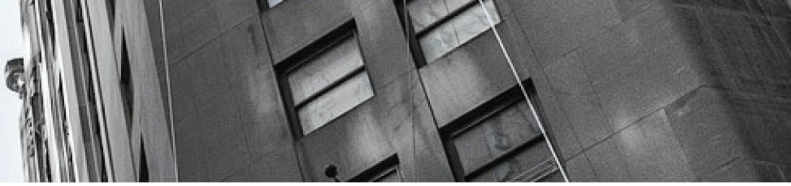
KEY TAKEAWAYS

Takeaway #1: Be Cognizant of Industry Norms

It is common in the industry to formally tender material projects and contracts. While materiality is not always the same, boards and condominium managers should be cognizant of industry norms. The regulations will set out the type of contracts condominium corporations will be required to tender.

Takeaway #2: Give Yourself Ample Time

It takes time to fully and properly tender a project. In order to help facilitate a competitive process in which all necessary parties (including project consultants, engineers, designers, lawyers, condominium managers, board members, bidders, etc. as the case may be) have an opportunity to contribute to the process, ample lead up time should be set aside. Objectives of tendering include accountability, transparency and competitive pricing and it is a timely process.



Takeaway #3: Seek Legal Advice from the Outset

Given the importance of the tender process and potential legal exposure arising from Contract A, condominium corporations should consult with their lawyers well in advance of issuing a tender. If a tender is issued and legal advice is only then sought, even if a bid is not yet selected, the condominium corporation may be very limited in terms of changes it can request based on legal advice. With the increase of tendered services and projects in condominiums, many condominiums are seeking legal input too late in the process. Legal advice should be provided at the outset.

Takeaway #4: Be Fully Engaged and Informed Throughout the Tender Process

It is important that the Board is fully engaged and informed throughout the process. The Board should be able to review drafts well in advance of meetings and understand the process. This requires ample timing. If the board is advised about the tender process and the underlying work/services required well in advance, it will be better informed and more engaged.

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