



Is the bidding slip an infinitely flexible document?

The bidding slip contains the work to be performed, as well as the quantities and costs of required materials entered by the engineer. But is this slip a «flexible» document? In other words, is it acceptable to increase the required quantities to create a secret budget reserve used for other purposes? Here is the answer recently given by the Disciplinary Council to a female engineer.¹

AN ABYSMAL PROJECT SITE!

It was an “incredibly unusual”, and very tense project site. The work atmosphere was very bad, much like relations between the engineering firm’s and the contractor’s agents. The female engineer in charge of the project received hundreds of claims for extra costs from the contractor, up to 500. In addition, the contractor heavily demonstrated his eagerness to get paid, going as far as using verbal abuse and physical threats towards the engineers on site, in particular the site supervisor.

Consequently, the engineer in charge of this large infrastructure project gave in to the pressure by putting in place an “administrative short cut” system in order to pay the contractor for the work he had done, “and nothing more”.

Those are approximately the terms used by the respondent engineer to describe the context that led her to falsify the bidding slip submitted to the Disciplinary Council, before which she was appearing regarding the complaint filed against her by the Office of the Syndic of the Ordre. It should be noted

that the hearing included testimonies by, among others, an engineer who supervised the site, and the Project Manager, who both had complaints filed against them as well.

THE END DOES NOT JUSTIFY THE MEANS

Here is a summary of the three counts of complaints filed against the engineer in charge of the project:

1. Used dubious processes with regards to the bidding slip, notably in terms of actual quantities or actual costs incurred, and built a system to falsify the slip which helped work around the process specified in the contract, thus violating sections 3.02.01 and 3.02.08 of the *Code of ethics of engineers*;
2. Did not ensure to meet her obligations of impartiality and transparency in her interactions with the departments and the municipality investing in the project site, failing to inform them of the changes made to the work; did not ensure to comply with her obligation regarding the balance and fairness of payments between them, violating section 3.02.10 of the *Code of ethics of engineers* and section 59.2 of the *Professional Code*;
3. Failed to meet her obligations with dignity, and caused harm to the profession as a whole by circumventing the intended process, without regard to the effects on those who were bearing the cost of the works, thus violating section 59.2 of the *Professional Code*.

The respondent engineer pleaded guilty to those three counts of complaints. She also maintained that she had not committed fraud, but that she rather acted without any malicious intent, that she was caught in a whirlwind and looked for a way to improve the relationship with the contractor. In short, the abysmal context apparently warranted setting up a system circumventing the process specified in the contract. Were those sufficient or mitigating reasons justifying the way she acted?

Absolutely not, according to the Assistant Syndic's counsel. In order to create a \$170,000 secret reserve, the respondent engineer not only knowingly falsified documents, but also devoted time and efforts to building a system intended to circumvent a procedure specified in the contracts for authorizing and claiming extra charges, i.e. producing modification instructions. As he explained, the engineer routinely "inflated" quantities of materials used, with the cooperation of the contractor, in order to receive a payment based on this over invoicing.

In so doing, the engineer was betraying the trust of the departments who were investing in the project. As she had the obligation to act as a trustee and comply with her Code of ethics, she tarnished the credibility of the whole profession and undermined the trust of the public, who rightfully expects that public funds be used in an appropriate and transparent manner.

In matters of ethics, noted the counsel for the complainant, the end does not justify the means.

DETERRENT AND EXEMPLARY PENALTIES

The Disciplinary Council found the violations perpetrated by the engineer infringed the fundamental values relating to the practice of engineering, and caused harm to the profession as a whole. The respondent, he noted, created a "secret reserve" system, and used public funds for other purposes than those intended. Furthermore, this experienced engineer never should have let things deteriorate in such a way. In making its ruling, the Disciplinary Council reminded that its role is not to punish the professional in question, but rather to make sure the penalties imposed have a deterrent effect on the respondent and on the other members of the profession, with a view to protecting the public.

THE DISCIPLINARY COUNCIL FOUND THE VIOLATIONS PERPETRATED BY THE ENGINEER INFRINGED FUNDAMENTAL VALUES RELATING TO THE PRACTICE OF ENGINEERING, AND THAT HER CONDUCT WAS SERIOUS AND CAUSED HARM TO THE PROFESSION AS A WHOLE.

It should be noted here that the counsel for the respondent wished for a two week temporary removal from the roll, explaining that his client had already "paid her dues", given the negative publicity surrounding this matter, starting the very next day following the filing of the disciplinary complaint. For his part, the counsel for the complainant was asking the Council to enforce a four year temporary removal from the roll as well as the payment of disbursements (including expert fees totaling in excess of \$193,000), with the two other respondents.

The Council found the request from the respondent's counsel inadequate, as a two week penalty would have trivialized defaults on duties which are at the heart of the practice of the engineering profession. Moreover, he considered the request for a four year removal from the roll and payment of all disbursements inappropriate, as it was perceived as punitive.

Considering the nature of the penalty must be fair and appropriate to the fault, the Disciplinary Council consequently applied² an 18 month temporary removal from the roll for each of the three counts, to be served concurrently, as well as payment of 65% of disbursements, limiting the overall payment of expert fees to \$100,000.

1. Complaint no. 22-13-0455.

2. At the time of going to press, the decision on the penalty had been appealed before the Professions Tribunal.