



Mr. Pier-Olivier Fradette
Lawyer

When and How to Exercise an Option in a Municipal Contract

When a municipality solicits services, it is common for the contract to come with options for its term or renewal. But how and when can the municipality exercise those options?

The contract documents will contain the answer; the terms of the call for tenders must clearly express how and when the municipality may exercise those options. Here are a few tips for drafting the clauses of a call for tenders relating to the term or renewal of a service.

Who benefits?

Contract documents are required to specify who benefits from the option or choice of service term. Fixed-term contracts must stipulate who is allowed to exercise the renewal option: the municipality, the company, or both. If this choice lies solely in the hands of the municipality, this must be clearly stated in the renewal clauses. Otherwise, both parties may be allowed to exercise the option.

Renewal options or fixed-term scenarios

There are a number of ways to include options for the term of a service. For instance, a municipality could provide for a fixed initial term, followed by optional additional years. It could also provide for different fixed terms, then choose between them at the appropriate time.

Once again, the key to success lies in the quality and clarity of the clauses laying out the municipality's expectations and how the term is to be chosen.

When and how to exercise an option

The municipality needs to consider its needs and determine when it wishes to be able to choose the term of the service.

If the service can be renewed for additional years, the municipality must indicate whether it will exercise this option when the contract is awarded or at the end of the initial term. In the latter case, the contract must specify how the company will be notified of the choice.

Meanwhile, if the choice is to be made at the time the contract is awarded, the municipality will no longer have the ability to choose once the resolution has been adopted.

Finally, if the clause has been written properly, both parties will need to carefully follow the conditions for choosing the term of the service or the option to renew. Once the choice has been made, both parties will have certain rights and obligations.

Ultimately, keep in mind that the success of an option depends on the quality of the clauses in the call for tenders.

NOTRE ÉQUIPE EN AFFAIRE MUNICIPALE

— Lavery



DANIEL BOUCHARD
Associé / Québec



VALÉRIE BELLE-ISLE
Associée / Québec



CHLOÉ FAUCHON
Associée / Québec



PIER-OLIVIER FRADETTE
Associé / Québec



ANNE-MARIE ASSELIN
Avocate principale / Québec



SIMON GAGNÉ CARRIER
Avocat / Québec



SOLVEIG MÉNARD-CASTONGUAY
Avocate / Québec



PHILIPPE VACHON
Avocat / Québec



ANDRÉ LANGLOIS
Avocat consultant / Québec