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What Discussions Can a Municipality Have with Suppliers Before Drafting a Call for Tenders?

I often hear municipal representatives say that they lose suppliers when they reach out before a call for tenders is drafted to find out what products or services those suppliers have to offer, because it deprives them of the opportunity to tender on the project. It is also common for calls for tenders to include clauses specifically prohibiting those who have helped develop a call for tenders from tendering.

This approach is certainly cautious, but it is in fact overcautious and unjustified. What discussions can a municipality's representatives have with relevant market players when planning a project? Keep reading to find out.

The importance of identifying needs and understanding the state of the market

It is well known that the foundation of any municipal contract management project is identifying the need to be met.¹ In fact, it is a good idea for municipalities to take time to think carefully about their need and investigate all the options available to them.

For example, when a municipality finds that it needs a remote control system for ventilation in a building so that it can harmonize with those in other buildings, it is to the municipality's advantage to be aware of the different technologies on the market. If it finds that several suppliers meet its needs and can offer products that are compatible with the existing system, it no longer has to stay with the supplier for the pre-existing system and has significantly widened its pool of potential tenderers. What's more, when the call for tenders is published, it will reach more tenderers, raising the municipality's chances of receiving competitively priced tenders.

Identifying needs must therefore be the first step, but the project can also involve communicating with people who are familiar with the field. To continue with the previous example, the municipality would do well to contact either suppliers directly, or engineers specializing in building mechanics, to find out about the products and technologies available. In fact, these discussions may even result in the need shifting, as the municipality learns that the initial idea can be improved.

When it comes to drafting a call for tenders, municipalities must always be guided by one essential principle: opening up the contract to competition. To that end, it is not only desirable, but even expected that municipal representatives know the state of the market and draft their call for tenders in a way that maximizes the number of potential tenderers.²

Preliminary discussions with suppliers

So, how can a municipality hold these discussions without preventing suppliers from tendering on the project?

1. Communications with suppliers should be prepared so that everyone is given the same information and asked the same questions. The aim is to avoid giving one supplier an advantage by providing different information.
2. The information and questions sent to the suppliers can provide enough detail about the project to ensure that the answers allow the municipality to truly consider the market's ability to meet the need and reflect on how to better define that need.
3. Suppliers should be encouraged to present their product or service objectively, without significant justification or attempts to limit competition inappropriately.
4. A register or log of communications with suppliers should be kept to record the content of the communications and the date, time, and names of the parties involved.
5. The municipality must never use the information it receives to prepare a directed call for tenders that only allows one or a handful of suppliers to actually tender. As long as the administrative and technical conditions of the call for tenders uphold the principle of opening up the contract to competition, none of the suppliers contacted should be prevented from tendering.

¹ ADMQ's "Contract Management: From Planning Requirements to Executing Contracts" course will teach you more about this subject. See [Contract Management | October 2024 – ADMQ – Association des directeurs municipaux du Québec](#).

² See in particular Autorité des marchés publics decisions *Recommandation 2021-17 Ville de Laval* and *Recommandation 2021-22 CISS Abitibi-Témiscamingue*, as well as the text by the author, "La détermination préalable des besoins," published in 2022 in the collection *Développements récents en droit municipal*, pages 11 to 21: [eDOCTRINE - CAJ](#).

Do note that the principle that a contract must be open to competition must not be confused with the principle that municipalities have the right to set the conditions for carrying out a contract in a way that allows them to obtain the work, goods, or services they actually need. One does not preclude the other. The conditions simply cannot “unduly limit competition.”³ Such undue limitation of competition can occur when the conditions of the call for tenders allow only a small number of tenderers, without this being justified by an adequate determination of the need and its validation with the market that can meet it.

In short, it is recommended that a municipality contact suppliers beforehand to confirm that they have properly determined their needs, and to identify ways to meet those needs. As long as it takes sufficient precautions to avoid favouring one supplier over another or unduly limiting competition when preparing the call for tenders, it can reassure suppliers that such discussions will not prevent them from tendering.

The advantages of such an approach are undeniable.



³ The Autorité des marchés publics has used the French equivalent of this expression, “[ces conditions] ne limitent pas indûment la concurrence,” in several decisions when assessing the combined effect of conditions in calls for tenders that tend to reduce the pool of potential tenderers without reason. See the author’s text cited in the previous note for the references to these decisions.

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Le magazine Scribe • November 2024