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THE A TO Z OF LOCAL GOVERNMENT PROCUREMENT

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I. INTRODUCTION

As we all know, local governments are significant consumers of both goods and services. Local governments purchase a vast array of goods, including office equipment and supplies, recreational equipment and supplies, and emergency vehicles and equipment. Local governments also purchase a vast array of services, including janitorial services, construction services, and professional consultant services.

Suffice it to say that a significant part of the daily activities of a local government involves the procurement of these goods and services.

Given the nature and role of local governments, the procurement of goods and services raises a number of issues that must be considered in order to ensure that a local government receives good value for its dollar. In this paper, we will canvas a number of those issues.

II. THE POWER TO CONTRACT GENERALLY

Municipalities derive their power to contract from section 8(1) of the *Community Charter*, which confers "the capacity, rights, powers and privileges of a natural person of full capacity" on all municipalities.

Regional District's derive their power to contract from section 263 of the *Local Government Act*, which confers "corporate powers" on all regional districts, including the power to make agreements respecting their services, operation and enforcement in relation to their exercise of their regulatory authority, and the management of property or an interest in property held by them.

For both municipalities and regional districts, the power to contract must be exercised in accordance with the empowering legislation and, in particular, must be exercised subject to the limits and requirements established by that legislation.

III. THE EXERCISE OF THE POWER TO CONTRACT

A. Authorization of the Contract

Section 114(3) of the *Community Charter* provides that, except as otherwise provided under the *Community Charter* or another Act, "the powers, duties and functions of a municipality are to be exercised and performed by its council". Pursuant to section 122(1) of the *Community Charter*, a municipal council may only exercise its authority by resolution or bylaw.

Likewise, section 194(2) of the *Local Government Act* provides that, unless the *Local Government Act* or another Act provides otherwise, "the powers, duties and functions of a regional district are to be exercised and performed by its board". Pursuant to section 226(2)(a) of the *Local Government Act* and section 122(1) of the *Community Charter*, a regional district board may only exercise its authority by resolution or bylaw.

With respect to the power of a local government to contract, the courts have held, in cases such as *Amalgamated Recreation Engineers and Network Associates Ltd. v. Town of Sidney et al.*, that a contract that was not authorized by a resolution or bylaw passed by the municipal council or regional district board was not binding on the municipality or regional district. In addition to such a contract not being binding on the municipality or regional district, the contract is not binding on the other party to it.

As noted above, the general requirement that the authority of a local government may only be exercised by resolution or bylaw of the local government's governing body is not applicable where the *Community Charter*, the *Local Government Act*, or another Act provides otherwise. Sections 154 of the *Community Charter* and 229 of the *Local Government Act* provide otherwise. Pursuant to section 154(1) of the *Community Charter*, a municipal council may, by bylaw and subject to the terms and conditions the council deems appropriate, delegate its powers, duties and functions to a council member or council committee, an officer or employee of the municipality, or another body established by the council. Pursuant to section 229 of the *Local Government Act*, a regional district board may, subject to the terms and conditions the board deems appropriate, delegate its powers, duties and functions to a board member or board committee, an officer or employee of the regional district, or another body established by the board. The power of a board to delegate its powers, duties and function must be exercised by bylaw adopted by an affirmative vote of at least two-thirds of the votes cast (see: Section 230 of the *Local Government Act*).

The authority of a local government to delegate its powers, duties and function undoubtedly includes the authority to delegate the power of a local government to contract.

When establishing, in a delegation bylaw, the terms and conditions on which a delegate may authorize the entering into of a contract by the local government, the local government should determine which terms and conditions are fundamental to the delegate's exercise of the power to contract, and should incorporate only those terms and conditions into the bylaw. By doing so, the local government will ensure that its delegate has sufficient flexibility in the exercise of the delegated power to achieve the goals of the local government. A typical term incorporated into a delegation bylaw in respect of procurement matters is that the expenditure must be authorized by the local government's financial plan. If the local government incorporates terms and conditions into the bylaw that are overly onerous, the delegate will not be able to act without an amendment to the delegation bylaw itself. For example, if the local government

includes a term that all goods and services having a specified value must be acquired through a competitive procurement process, the delegate will not be able to sole source the acquisition of the goods or services even where there is urgency to the matter or is only one competent supplier of the same.

In light of the authority of a local government to delegate its power to contract, when considering whether a contract is binding on a local government or the other party to the contract, the courts will have to consider the following questions:

- Whether the contract was authorized by resolution of the municipal council or regional district board;
- If it was not, whether there was a valid bylaw in force at the time of the purported entering into of the contract that delegated the authority to contract; and
- If there was a valid delegation bylaw in force at that time, whether the delegate authorized the contract in accordance with the terms and conditions specified in the bylaw.

If the answer to the first of these questions is no, and the answer to either the second or third question is no, the contract will likely be held to not be binding on either the municipality or regional district or the other party to it.

B. The Role and Content of Purchasing Policies

Many, if not all local governments, have purchasing policies that guide their staff in the procurement of goods and services. The content of these purchasing policies can be quite varied depending on the local government and its particular goals.

The primary role of a purchasing policy is to provide direction to local government staff as to how to proceed after the procurement of goods or services has been authorized by the municipal council or regional district board, or its delegate under a delegation bylaw. In this regard, the terms and conditions for procurement specified in the policy supplement the terms and conditions, if any, imposed by the municipal council or regional district board in its resolution authorizing the acquisition of the goods or services or in the delegation bylaw. For example, it is common to find terms and conditions in purchasing policies specifying, based on the value of goods or services to be obtained, the procurement process to be utilized by staff. For lesser value goods and services, purchasing policies will often authorize their acquisition based on the receipt of several quotes or even through sole sourcing. For significant value of goods and services, purchasing policies will often require their acquisition be through a competitive bidding process.

Where a purchasing policy specifies terms and conditions for the acquisition of goods or services, it is important to note the following:

- The municipal council or regional district board may, on a case by case basis, pass a resolution authorizing local government staff to acquire goods or services through a process different from the terms and conditions set out in the purchasing policy. This can be done either in advance of the action or retroactively; and

- The failure of local government staff to follow the terms and conditions set out in the purchasing policy will not necessarily invalidate the contract to acquire the goods and services. As a purchasing bylaw is a matter of internal procedure, the courts may look at a failure to follow the terms and conditions set out in the purchasing policy as a mere irregularity that does not affect the validity of the contract. That being said, the local government may view the failure as grounds for disciplinary proceedings being brought against the staff member.

IV. THE CHOICE OF PROCUREMENT PROCESS

A. Limits on the Choice of Procurement Process

1. Statutory Limits

There are very few statutory provisions that impose mandatory processes on a local government in the exercise of its powers to contract. However, some do exist and local governments must be aware of those requirements when exercising their powers to contract. For example:

- Pursuant to section 175 of the *Community Charter* (which is made applicable to regional districts by section 403 of the *Local Government Act*), a local government cannot enter into a contract that has a term of more than five years, and that imposes a liability of a capital nature on the local government, without first obtaining the approval of the electors to the contract; and

- Pursuant to section 285 of the *Local Government Act*, a regional district cannot enter into a contract for the disposition of land or improvements without first having made the land available to the public for acquisition.

Generally speaking, the statutory provisions that impose mandatory processes on a local government in the exercise of its power to contract relate to powers that are unique to local governments in their governmental capacity, and do not affect a local government's power to contract in its corporate capacity. In the latter capacity, a local government has significant flexibility in exercising the power to contract. A local government can exercise the power to contract across the spectrum from the acquisition of goods or services through sole sourcing to the acquisition of goods and services through a competitive bidding process that is open to the public at large.

2. The Impact of Trade Agreements

The Province is a party to a number of trade agreements, including the Agreement on Internal Trade (AIT) with the Federal Government and other provinces and territories, the Trade, Investment and Labour Mobility Agreement (TILMA) with Alberta, and the New West Partnership Trade Agreement (NWPTA) with Alberta and Saskatchewan.

The AIT, TILMA and NWPTA each contain provisions directed at procurement by local governments.

The AIT contains procurement requirements for "municipalities, municipal organizations, school boards and publicly funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding". These requirements apply where the "procurement value" is $100,000 or greater for goods and services, or $250,000 or greater for construction and include the following:

- No discrimination based on province of origin of the goods, services or materials, or the province of origin of the supplier of the goods, services or materials; and
- Procurement shall use a "fair acquisition process that is based on the highest degree of competition, efficiency and effectiveness and is consistent" with the non-discrimination and transparency requirements of the AIT.

Importantly, a "fair acquisition process" includes "all methods of tendering such as requests for information, requests for quotations, requests for proposals, requests for qualification and calls for tender".

The TILMA and NWPTA are substantially the same, and require that the parties "will provide open and non-discriminatory access to procurements" of "regional, local, district or other forms of municipal government, school boards, public funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding entities" where the procurement value is $75,000 or greater for goods or services, or $200,000 or greater for construction.

British Columbia local governments are not signatories to these trade agreements, and the Province has not enacted any legislation obliging local governments to comply with these trade agreements. As such, these trade agreements are not directly binding on local governments.

The foregoing being said, local governments may indirectly be bound by these trade agreements where they are receiving Federal or Provincial grant monies to partially fund the acquisition of goods or services. Both the Federal and Provincial governments have included in grant agreements requirements that local governments receiving grant funds comply with these trade agreements.

3. Purchasing Policies

As stated above, it is common to find terms and conditions in purchasing policies specifying, based on the value of goods or services to be obtained, the procurement process to be utilized by local government staff. Depending on the value of goods or services being acquired, purchasing policies will often authorize their acquisition using anything from a sole sourcing process to a competitive bidding process available to the public at large.

Again, where a purchasing policy specifies terms and conditions for the acquisition of goods or services, it is important to note that the municipal council or regional district board may, on a case by case basis, pass a resolution authorizing staff to acquire goods or services through a process different from the terms and conditions set out in the purchasing policy. This can be done either in advance of the action or retroactively.

Purchasing policies may also include direction from the municipal council or regional district board as to who is permitted to participate in a procurement process. The courts have held that, like any purchaser of goods or services, a local government can exclude a particular supplier of goods or services from a procurement process for bona fide business reasons. In *Sound Contracting Ltd. v. City of Nanaimo*, the Court upheld a policy of the City of Nanaimo to exclude bids from any company or agency where there was a current or pending legal action either by or against the City relating to work of a similar nature. The Court held that, despite the Plaintiff and other companies related to it being the intended targets of the policy, the policy was nonetheless valid as it was implemented for bona fide commercial or business purposes.

B. The Available Procurement Processes

As discussed above, local governments have the ability to choose from any number of procurement processes for the acquisition of goods and services, including sole sourcing, informal requests for quotations, formal competitive bidding processes available only to pre-qualified suppliers, formal competitive bidding processes available to the public at large, and everything in between.

C. Factors in Choosing the Right Procurement Process

The choice of procurement process will be determined on the basis of the local government's objectives, and the nature of the goods or services being acquired.

Where there is urgency to the acquisition of the goods or services, the local government may procure those goods or services through a less formal process such as sole sourcing or requests for quotations. For example, where there has been a marine fuel spill on a local government's property, the local government may have no choice but to retain the first available consultant and contractor to undertake the site remediation.

Where there are limited suppliers of the goods or services that are needed by the local government, the local government may choose to procure those goods or services through a formal competitive bidding process available only to pre-qualified suppliers. For example, when constructing a multi-million dollar wastewater treatment plant utilizing ultraviolet technology, the local government will want to ensure both that the prospective contractors have the qualifications to undertake the work, and that the local government is obtaining good value for its dollar. In such circumstances, the local government may wish to invite only those contractors who the local government knows to have the qualifications to undertake the work to bid on the contract for the construction of the project.

Where there are no limitations on the timing for the supply of goods or services to the local government, or in who has the ability to supply them, the local government may choose to procure those goods or services through a formal competitive bidding process available to the public at large.

D. The Choice of Competitive Bidding Process: Request For Proposals vs. Tender

When considering the type of competitive bidding process to be used for the acquisition of goods or services, a local government should first consider what its objectives are for the procurement process. Is the local government looking for creativity in the provision of the goods or services, or does the local government have a specific product or service in mind? Does the local government want the "bidder" to be bound by its submission, or is the local government looking for a basis on which to negotiate with the "bidder"? Does the local government want to be bound by its process, or does the local government want unlimited flexibility in its choice of supplier for the goods or services?

Where the local government is looking for creativity in the provision of the goods or services, and does not have a specific product or service in mind, the local government will likely choose a request for proposals process. In a true request for proposals process, the local government sets out a broad statement of requirements for the goods or services and leaves it to prospective suppliers of the goods or services to inform the local government as to how its requirements can best be achieved. More often than not, in such circumstances, there will be aspects of the proposals that will require clarification to ensure that they achieve the local government's objectives. There may also be a desire on the part of the local government to

negotiate with one or more of the prospective suppliers to obtain the greatest value for the local government's dollar. As such, the local government is willing to accept that the prospective suppliers will not be bound to the local government by submitting a proposal. Moreover, the local government does not want to be bound to the proponents until negotiations are successfully concluded.

Where the local government has a specific product or service in mind, and wants the "bidder" to be bound by its submission, the local government will likely choose a tender process. Through a tender process, the local government is primarily seeking the lowest price for the acquisition of the goods or services being sought. In this context, the local government wishes for the bidder to be bound to provide the goods or services for the price stated. Moreover, the local government may be willing to be bound to the bidders in respect of the process for awarding the contract for the supply of the goods or services.

E. The Tender Process: Contract A or No Contract A?

We recommend that a local government expressly preclude Contract A from arising in the context of a tender process. A local government can do so in a number of manners. The most clear manner to preclude Contract A from arising is to expressly state in the tender documents that, notwithstanding any other provisions in the tender documents, the tender documents or the submission of a bid in response to the tender documents does not give rise to any express or implied legal or other obligations, whether in contract, tort, equity or otherwise, including those obligations commonly referred to as Contract A, on the part of the local government.

Whether a local government wishes for Contract A to arise in the context of a tender process will depend on whether the local government believes that it will obtain sufficient bids for the supply of the goods or services being sought if it precludes Contract A from arising under the tender process. Where the local government is under that belief, and wishes for Contract A to arise, the local government should be careful to ensure that it incorporates into the tender documents broad discretion, limits on liability, and waiver clauses. The local government should also be careful to set out in the tender documents all criteria that may be considered by the local government in evaluating bids.

The concept of Contract A, and the content of the same, have been written about in detail by various lawyers at Young, Anderson for past firm seminars. Those papers can be viewed on our website.

V. THE TERMS OF THE CONTRACT ITSELF

A. The Obligations of the Parties

When making a contract on behalf of a local government, the most important principle to keep in mind is that, in order to limit risk to the local government from the contractual relationship, there must be certainty between the parties as to the obligations of the parties. In this regard, it is imperative that the parties first finalize the written contract.

When setting out the obligations of the parties, the local government should ensure that it uses precise language that is not susceptible to interpretation. For example, a contract that imposes an obligation on the local government to "cooperate" can pose significant issues for the local government. What the local government believes is necessary to meet the duty to cooperate may be very different from what the other party to the contract believes is necessary. If there is no way to avoid such language, the local government should include sufficient qualifications to the obligation. For example, an obligation to "cooperate" could be qualified to be only "to the extent deemed appropriate by the local government acting reasonably".

It is always preferable to evidence the nature of the obligations placed on the parties under the contract in writing. The written contract should stipulate that the written contract constitutes the whole of the contract between the parties and that the representations, discussions, and negotiations between the parties towards the making of the contract that are not evidenced directly in the written contract do not form part of the contract. The written contract should include all of the fundamental terms of the contract (e.g., the description of the goods or services to be provided to the local government under the contract, the price to be paid for the goods or services, the method and timing of payment, the duration of the contract, and the rights of the parties to unilaterally terminate the contract with or without cause). In addition, the written contract should specifically address any specific concerns that the local government has with respect to the contractual relationship.

B. The Allocation of Risk

The contract should clearly address all issues of risk associated with the performance of the contract. In this regard, the contract should incorporate appropriate waivers, releases, limits of liability, and insurance provisions. For further information on such provisions, please see the recent paper written on the subject on our website.

C. The Right to Subcontract and/or Assign

In preparing a contract for goods or services, the local government should consider whether it wishes to permit the other party to subcontract the provision of the goods or services under the contract, or to assign the contract. At the very least, the local government should include a requirement in the contract that the provision of the goods or services cannot be subcontracted, and that the contract cannot be assigned, without the prior written authorization of the local government. By doing so, the local government reserves to itself the ability to investigate the appropriateness of a subcontractor or assignee to ensure that the subcontracting or assignment does not adversely affect the provision of the goods or services.

D. The Right to Terminate

The greatest exposure to liability for a local government in a contractual relationship arises in situations where the local government seeks to terminate the contract prior to it expiring on its own terms. In the event that the local government wrongfully or improperly terminates the contract, the local government may be liable to the other party for the profits lost by it from the early termination of the contract.

All local government contracts should include provisions authorizing the local government to unilaterally terminate the contract with or without cause. In including such a provision into the contract, the local government should ensure that the process for exercising the right of termination is not too onerous as it will be necessary for the local government to fully follow that process in order to validly terminate the contract and avoid liability to the other party from the termination of the contract.

E. Liquidated Damages

Quite often, the breach of a contract with a local government by the other party often impacts the public interest in a manner that is not readily quantifiable. For example, where a local government has entered into a contract for the construction of new recreation facility, and the contractor fails to complete the facility in accordance with the required contractual schedule, the local government will suffer quantifiable losses, including losses associated with additional internal staff costs, consultant costs, and lost revenues from the use of the facility. However, the local government will also suffer losses as a result of the delay in the public's ability to use the facility as originally scheduled. Where the breach of a contract may impact the public interest in a manner that is not readily quantifiable, the local government should consider including in the contract a clause which requires the other party to pay to the local government a liquidated amount on account of the impact to the public interest from the breach. In establishing the liquidated amount, the local government should take care to ensure that the amount is not punitive, but is a bona fide estimate of the value of the impact of the breach on the public interest.

VI. SPECIAL CONSIDERATIONS FOR CONSTRUCTION CONTRACTS

A. The Decision as to the Form of Contractual Relationship

Traditionally, there have been two forms of contractual relationship used by local governments in relation to construction projects; the first, being where the local government enters into a single contract with a contractor for all services in respect of the construction of the project and the second being where the local government enters into a contract with a construction manager for all services relating to the management of the construction project and enters into direct contracts with numerous trade contractors to carry out discrete aspects of the construction of the project. The former is known as a "General Contractor" form of contractual relationship and the latter is known as a "Construction Management" form of contractual

relationship. More recently, local governments have been considering a third form of contractual relationship in relation to construction projects, being a hybrid of the latter form of contractual relationship known as "Construction Management At Risk".

The General Contractor form of contractual relationship transfers the greatest degree of risk in respect of the costs of constructing the project from the local government to a third party, in this case the general contractor. In this form of contractual relationship, the general contractor is responsible for completing the construction project for the contract price, subject to amendment for approved extras, regardless of the costs actually incurred by the contractor to complete the work. In addition, if a subcontractor defaults in respect of the completion of its work in respect of the contractor, the contractor is responsible for ensuring that the subcontractor's work is completed at no additional cost to the local government. Moreover, if that subcontractor's default results in delays to other subcontractors completing their work, the contractor is responsible for ensuring that the other subcontractors' work is completed at no additional cost to the local government. In addition, if the general contractor defaults on its contract, the local government only has one party that it must deal with in order to ensure the completion of the project. As a result of this significant transfer of risk, the up-front disclosed costs of such a contractual relationship are generally higher than the up-front disclosed costs of a Construction Management or Construction Management At Risk contractual relationship.

Generally speaking, the Construction Management form of contractual relationship retains risk in respect of the costs of constructing the project with the local government. The role of the construction manager is to coordinate the construction of the project (including the preparation of tender and contract documents, the handling of the tender processes for the trade contracts, and the completion of tender documents), and the supervision of the construction of the project with the various trade contractors. As for the contract with the construction manager, it must be remembered that the construction manager's fee is based on the amount of time expected to complete the project and, to the extent that the time to complete the project exceeds that estimate, the construction manager will charge additional monthly amounts for that additional time. In addition, standard form construction manager contracts require local governments to reimburse the construction manager for, amongst other things, the construction manager's actual costs of providing the construction management services. In this regard, the construction manager's contract fee represents the construction manager's expected profit on the contract; the construction manager being reimbursed for its actual costs of providing the services as a "reimbursable expense". As for the contracts with the trade contractors, it must be remembered that each trade contractor is only responsible for the work included within its contract and that the coordination between the trade contractors is the responsibility of the local government through the construction manager. Often times, the contract with the construction manager and the contracts for the trade contractors do not adequately address the coordination responsibilities of each party, and the construction manager fills the gaps and charges the local government for doing so. Moreover, there is usually work that is required to be done that is not within the scope of any of the trade contracts. The construction manager usually carries out this work and charges the local government for the same. All of these are "hidden" costs that can rapidly increase the up-front

disclosed costs of a Construction Management form of contractual relationship. In addition to these hidden costs, the local government has risk in respect of each of the contracts with the trade contractors that the trade contractor will default in respect of its contract. In such circumstances, the local government is responsible for the costs associated with remedying the default of that trade contractor, and with the additional costs incurred by other trade contractors as a result of the default of that trade contractor. These costs can rapidly escalate. In addition, the local government will have to maintain a builders lien holdback in respect of each trade contract and deal with any liens filed against the local government's property on which the project has been constructed. Local governments should add to the up-front disclosed costs of a Construction Management form of contractual relationship an estimate of the costs associated with the risks outlined above.

The Construction Management At Risk form of contractual relationship transfers some risk from the local government to the construction manager in that the construction manager guarantees cost overruns to the extent of the construction manager's fees under its contract. However, in exchange for this guarantee, the construction manager generally demands a greater construction management fee and requires that it have greater control in respect of the selection and control of trade contractors. This form of contractual relationship essentially carries with it the same risks associated with the Construction Management form of contractual relationship, with those risks offset to the extent of the construction manager's fees. Again, local governments should add to the up-front disclosed costs of a Construction Management form of contractual relationship an estimate of the costs associated with those risks, less the amount of the construction manager's fees.

B. Design-Build Processes vs. Design-Bid-Build Processes

Many local governments have moved away from traditional design-bid-build processes for construction projects towards the use of design build processes on the basis that design-build processes provide the local governments with greater value for their dollar.

Under a traditional design-bid-build process, the local government retains a consultant to design the construction project. The local government then puts the project, as designed, to a competitive bid process for construction. Under this process, the local government has certainty as to the exact product that it is going to receive at the end of the day.

Under a design-build process, the local government establishes a detailed statement of requirements that must be met for the construction project, and then puts the project to a competitive bid process for both design and construction. Under this process, the local government trades certainty as to the exact product that it is going to receive at the end of the day in favour of lower cost.

There are a number of limitations in relation to a design-build project. One significant limitation arises from the fact that, on a design-build project, once the contract has been awarded to the design-builder, the design-builder's motivation is to deliver the project in a

form that minimally meets the local government's detailed statement of requirements, and provides the greatest profit to the design-builder. As such, in order to ensure that all of the objectives of the local government for the project are met, it is imperative that the local government's detailed statement of requirements is comprehensive. Moreover, it is imperative that the local government have sufficient expertise, either internally or through access to consultants, to fully review proposed design drawings to ensure that they meet the objectives of the detailed statement of requirements. Given the complex nature of many design-build projects, it is quite often the case that consultants of many disciplines are required for a single project.

When considering whether to proceed with a project using a design-build process, a local government should take into account the additional costs associated with review of the proposed design. In some cases, these additional costs will outweigh any cost benefits associated with the design-build process over the traditional design-bid-build process.

C. The Making of the Contracts

When entering into contracts for the construction of local government projects, a local government should be cautious in utilizing standard from construction contracts, such as the CCDC Stipulated Price Contracts, as such contracts have been developed over the years by the construction industry and have largely been drafted in a manner to protect the general contractor, the construction manager, or the trade contractor as the case may be to the detriment of the local government. In this regard, a local government should insist that the general conditions to the standard form contract be amended to properly allocate risk as between the local government and the other party, and that supplementary general conditions be added to the standard form contract for that purpose. For example, amendments should be made to standard form general contractor and trade contractor contracts that clearly identify the rights of the local government as they relate to the keeping and use of deficiency holdbacks on the one hand, and the keeping and use of builders lien holdbacks on the other hand, and the rights of the local government to call on performance security in circumstances of default, which circumstances are more clearly identified in the contract. Moreover, amendments should be made to standard form construction manager contracts to clarify the overall price to be paid to the construction manager.

VII. CONCLUSION

In conclusion, what we hope is readily apparent from the foregoing discussion is that it is of fundamental importance that a local government have thoroughly considered its objectives, and the contractual provisions necessary to achieve those objectives, prior to embarking on a procurement process for goods or services. Through such forethought, a local government can avoid significant difficulties in contract administration, and potential liability.

NOTES