

CON·STRUCT

Part of Volume 2, Issue 1

SUSTAINABLE SERVICE DELIVERY THROUGH ASSET MANAGEMENT AND CONTRACT ADMINISTRATION

In 2016, the most recent Canadian Infrastructure Report Card (CIRC) was released regarding the health of Canada's infrastructure, and the results were troubling. In its assessment of Canada's roads and bridges, public transit, buildings, sport and recreation facilities, stormwater, wastewater and potable water infrastructure, the report concluded that one-third of municipal infrastructure was ranked in fair, poor or very poor condition.

The CIRC's findings have prompted a renewed vigour in local governments to establish formal asset management plans as a means of ensuring the sustainable delivery of municipal services. "Asset management" involves a formal assessment of the current state of a government's assets, including grey infrastructure (e.g. engineered assets, such as roads, sewers, water systems, capital facilities) and green infrastructure (e.g. rain gardens, bioswales, green roofs, green walls) and the establishment of a strategic asset management plan to address the aging infrastructure, capital refurbishment, service delivery expectations and risk exposure. Some local governments are also now assessing the state of their natural assets (e.g. creeks, forests, aquifers, wetlands, foreshores) in recognition that such assets provide not only eco-benefits but also recreation, cultural and aesthetic benefits.

From a legal perspective, much of the discussion around asset management has been focused on risk management (i.e. on how to effectively manage assets to avoid system malfunctions/breakdowns, ensure public health and safety and sustain regulatory/environmental compliance). While risk management is clearly a critical consideration in the asset management process, local govern-

ments should also include in their asset management frameworks a process for inventorying their contractual rights, obligations and liabilities. Having a "contract inventory" is, in our view, crucial to a local government's ability to sustain infrastructure and service levels in a cost-effective manner. For example, it is through the myriad of local government contracts (e.g. asset purchase, partnering, concession, design-build, construction, rights of ways, development agreements etc.) that assets are acquired, infrastructure is designed, constructed and maintained and services are procured and delivered. Through these contracts, local governments, among other things, seek to optimize and secure performance, allocate risk and create cost-certainty. The principle problem is that parties usually focus more time on negotiating agreements and awarding contracts, rather than administering their existing contracts. This often leads to problems in contractor performance, cost-overruns, and delays in receiving goods or services. If a key outcome of asset management is the sustainable delivery of services in a cost-effective manner, how can this outcome be measured or achieved if contract administration is not included in the asset management framework?

The inventorying of municipal contracts allows a local government to properly administer those contracts. Contract administration, in basic terms, is comprised of the dealings between contracting parties from the time the contract is entered into or awarded until the work has been completed and accepted or the contract has been terminated, payment made and disputes resolved. In

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short, the process is designed to ensure that the government gets what it paid for on time, and within budget. Good contract administration also assures that the end users are satisfied with the product or service being obtained under the contract. As such, proper contract administration should be an essential part of any local government infrastructure project.

Critical to this process is identifying the complete contract (and all modifications and addendums thereto), understanding the scope of the local government's authority under the contract, as well as the responsibilities of each party, the procedures to be followed for notice and payment, and the circumstances warranting termination. Key dates and performance milestones should be diarized and there should be a centralized system for maintaining all contracts, related correspondence, inspection records, memos and conversations with contractors, if applicable, invoices, evidence of acceptance of work, and reviews/approval of reports.

Local governments are the stewards of community assets and have the responsibility of ensuring the delivery of services in a socially, economically and environmentally responsible manner. Doing so involves establishing priorities and making complex choices. Asset management, coupled with proper contract administration, can assist local governments to make such choices in an informed and reasonable manner.

May, 2017
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This article is intended for the general information of organizations in British Columbia. If your organization has specific issues or concerns relating to the matters discussed in this article, please consult a legal advisor.



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Pam brings over 18 years of combined legal experience in local government and commercial real estate matters with a focus on land use planning, subdivision, rezoning and redevelopment of residential, mixed-use and industrial properties. Pam has worked on numerous large-scale development projects throughout the Province and provides strategic and practical advice on project development, infrastructure financing and transactional matters. Pam also has a Master's Degree in Public Administration and is a seasoned advisor for local governments in all aspects of their legislative authority, including bylaw development, constitutional jurisdiction, conflict of interest and FOIPPA.

Our lawyers combine legal experience in local government, commercial real estate development, and construction law to provide legal services to local governments, owners, builders and developers on a range of projects, from concept to completion, and beyond.
