

## MA SJC Rules on “Termination for Convenience” Provisions

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In a recent decision, the Massachusetts Supreme Judicial Court ruled that governmental entities have great flexibility to terminate agreements with contractors where the agreement includes a “termination for convenience” provision. Many family-owned enterprises do business with the Commonwealth of Massachusetts or other governmental entities, and should be aware that the parties to those arrangements will have greater freedom to terminate these arrangements as a result of this decision.

In *A.L. Prime Energy Consultant, Inc. v. Mass. Bay Transportation Authority* (SJC 12370) (May 2, 2018), the plaintiff sued the MBTA over the MBTA’s termination of a contract to supply fuel oil. The contract contained a provision entitling the MBTA to terminate for convenience, and the MBTA notified A.L. Prime that it was terminating in order to obtain lower prices on the fuel oil from another contractor. A.L. Prime argued that the “Federal” standard in such cases should be applied. The Federal standard provides that a governmental agency that terminates an agreement for convenience can be liable for damages where the termination constitutes bad faith or an abuse of discretion, and terminating simply to obtain a lower price was often determined as acting in bad faith.

The SJC rejected the plaintiff’s argument, and ruled in favor of the MBTA. The SJC held that the plain language of the agreement was controlling, and that the termination for convenience provision would stand on its own. The Court also ruled that the termination did not constitute a breach of the implied covenant of good faith and fair dealing, based on the plain and unambiguous language in the agreement.

This ruling is significant for any entities that do business in Massachusetts with a governmental agency.

The decision is not specific to the product supplied (i.e., fuel oil), so contracts covering everything from building supplies to software development are now at risk. Parties doing business with the government should focus on negotiating contractual provisions that eliminate the right to terminate for convenience, and in the alternative should aim to include language that provides for recouping breakage costs, lost profits, and non-cancellable expenses when the termination for convenience right is exercised.

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