

### **CONTRACT MANAGEMENT BYLAW AMENDMENT 2022-003**

**WHEREAS** a Contract Management Policy was adopted by the Municipality on August 28, 2018 , in accordance with Article 938.1.2 of the Quebec Municipal Code (hereinafter referred to as "M.C.") (or Article 573.3.1.2 of the Cities and Towns Act (hereinafter referred to as "C.T.A."));

**WHEREAS** Section 938.1.2 C.M. (or Section 573.3.1.2 C.V.A.) was replaced, as of January 1, 2018, requiring municipalities, as of the latter date, to adopt a contract management by-law, the current policy of the Municipality being however deemed to be such a by-law

**WHEREAS** the Municipality wishes, as permitted by the 4th paragraph of Section 938.1.2 M.C. (or Section 573.3.1.2 V.S.A.), to provide rules for the awarding of contracts that involve an expenditure of at least \$25,000, but less than the threshold of the expenditure of a contract that can only be awarded after a public tender under Section 935 M.C. (or Section 573 V.S.A.);

**WHEREAS** as a result, section 936 M.C. (Invitation to Tender) (or section 573.1 S.C.A.) no longer applies to these contracts as of the coming into force of this by-law

**WHEREAS** this by-law meets the objective of transparency and sound management of public funds

**WHEREAS** a notice of motion was given and a draft by-law was tabled at the meeting of September 13, 2022

**WHEREAS** the Director General and Secretary-Treasurer (or Clerk) mentions that the purpose of this by-law is to provide measures relating to contract management for any contract to be entered into by the Municipality, including certain rules for the awarding of contracts for contracts involving an expenditure of at least \$25,000, but less than the threshold of the expenditure of a contract that can only be awarded after a public call for tenders pursuant to Article 935 C. M. (or section 573 V.S.A.), which threshold is, as of August 13, 2020, \$105,700, and may be amended following the adoption by the Minister of a regulation to that effect;

It is therefore

**128-09-2022** Moved by : Cr. Elliott

Seconded by : Cr. Cr. Holmes

And unanimously agreed to adopt the following amendment to the present Contract Management Bylaw

Carried

#### **SECTION II**

##### **INTERPRETATIVE PROVISIONS**

##### **3. Interpretation of text**

This by-law shall be interpreted in accordance with the principles of the Interpretation Act (R.S.Q.c. I-16).

It must not be interpreted as allowing derogation from the mandatory provisions of the laws governing municipal contracts, unless these laws expressly allow

derogation from them by this by-law, including, for example, certain measures provided for in Chapter II of this by-law.

#### **4. Other bodies or organizations**

The Municipality recognizes the importance, the role and the powers granted to other authorities that may investigate and act with respect to the objects covered by certain measures provided for in this by-law. This includes, in particular, measures aimed at preventing acts of intimidation, influence peddling, corruption, bid-rigging, as well as those aimed at ensuring compliance with the Lobbying Transparency and Ethics Act and the Code of Conduct for Lobbyists adopted under this Act.

#### **5. Specific rules of interpretation**

This by-law shall not be interpreted:

- (a) restrictively or literally;
- (b) restrict the ability of the Municipality to contract by mutual agreement, where permitted by law.

The measures provided for in this by-law shall be interpreted :

- (a) in accordance with the principles set out in the preamble to the Act primarily to recognize municipalities as local governments and to increase their autonomy and powers as such (2017, c. 13) (Bill 122) recognizing, among other things, municipalities as local governments and to elected officials, the legitimacy necessary to govern in accordance with their attributions;
  
- b) to respect the principle of proportionality and thus ensure that the steps related to the measures imposed are proportionate to the nature and amount of the expense of the contract to be entered into, having regard to the costs, the time required and the size of the Municipality.

#### **6. Terminology**

Unless the context otherwise requires, words and expressions used in this by-law have the following meanings:

"Invitation to Tender" means a public or invitational tender required by sections 935 et seq. of the Municipal Act or a regulation made thereunder (or sections 573 et seq. of the V.C.A. or a regulation made thereunder). The term "tender" does not include requests for quotations where no tender is required by law or by this by-law.

"Bidder" means any person who submits a bid in a bidding process.

### **CHAPTER II**

#### **CONTRACTING RULES AND ROTATION**

##### **7. General**

The Municipality respects the rules of contracting provided for in the laws that govern it, including the C.M. (or the L.C.V.). More specifically :

a) it proceeds by invitation to tender when the law or a regulation adopted by virtue of a law imposes such a call for tenders, unless a specific provision to the contrary is provided for in this by-law;

(b) it shall proceed by public tender in all cases where a public tender is required by law or by a regulation adopted pursuant to law

(c) may proceed by private contract where permitted by law or by this by-law. Nothing in this by-law shall be construed to limit the ability of the Municipality to use any method of competition for the award of a contract, whether by public tender, invitation or request for quotation, even if it may lawfully proceed by private contract.

#### **8. Contracts that may be entered into by mutual agreement**

Subject to section 11, any contract referred to in any of the subsections of the first paragraph of section 935 M.C. (or 573 V.S.A.), involving an expenditure of at least \$25,000, but less than the expenditure threshold of a contract that can only be awarded after a public tender under section 935 M.C. (or section 573 V.S.A.), may be entered into by private agreement by the Municipality.

#### **9. Rotation - Principles**

The Municipality shall, where possible, encourage rotation among potential suppliers with respect to contracts that may be entered into by mutual agreement pursuant to Section 8. The Municipality, in making its decision in this regard, shall consider the following principles, among others

- a) the degree of expertise required
- b) the quality of the work, services or materials already provided or delivered to the Municipality
- c) the time required to perform the work, supply the materials or services
- (d) the quality of the goods, services or work sought
- (e) the terms of delivery;
- (f) maintenance services;
- (g) experience and financial capability required;
- (h) the competitiveness of the price, taking into account all market conditions;
- i) the fact that the supplier has an establishment on the territory of the Municipality
- (j) any other criteria directly related to the contract.

#### **10. Rotation - Measures**

In order to ensure the implementation of the rotation provided for in Article 9, the Municipality applies, to the extent possible and unless there are special circumstances, the following measures

- a) potential suppliers are identified before awarding the contract. If the territory of the Municipality has more than one supplier, this identification may be limited to the latter territory or, as the case may be, to the territory of the MRC or any other geographic region that will be deemed relevant given the nature of the contract to be awarded

b) once the suppliers have been identified and considering the principles listed in Article 9, rotation among them must be favoured, unless there are reasons related to sound administration

c) the Municipality may proceed with a call for interest in order to identify suppliers likely to meet its needs

d) unless there are special circumstances, the person in charge of managing the contract completes, to the extent possible, the analysis form found in Appendix 4;

e) for the categories of contracts that it determines, for the purpose of identifying potential suppliers, the Municipality may also compile a list of suppliers. Rotation among the suppliers appearing on this list, if any, shall be encouraged, subject to the provisions of paragraph b) of this section.

#### **10.1**

**(This section shall be effective from June 25, 2021 or the day this bylaw comes into force, whichever is later, and shall remain in effect until June 25, 2024)**

Without limiting the principles and measures set out in this by-law with respect to the rotation of suppliers, in awarding any contract that involves an expenditure below the decreed threshold of the expenditure of a contract that can only be awarded after a public request for tenders, the municipality must favour Quebec goods and services as well as suppliers, insurers and contractors who have an establishment in Quebec.

For the purposes of this section, an establishment in Quebec is any place where a supplier, insurer or contractor carries on business on a permanent basis that is clearly identified with its name and accessible during normal business hours.

Quebec goods and services are goods and services of which the majority of their design, manufacture, assembly or realization is done from an establishment located in Quebec.

The Municipality, in making a decision regarding the awarding of a contract referred to in the present article, shall consider, among other things, the principles and measures set out in the articles of the by-law regarding the rotation of potential suppliers, subject to the necessary adaptations for local purchasing

### **CHAPTER III**

### **MEASURES**

#### **SECTION I**

#### **OVER-THE-COUNTER CONTRACTS**

##### **11. General**

For certain contracts, the Municipality is not subject to any particular competitive bidding procedure (public call for tenders or by invitation). The present by-law cannot have the effect of restricting the possibility for the Municipality to proceed by mutual agreement for these contracts. These contracts include, but are not limited to:

- Those which, by their nature, are not subject to any tendering process (contracts other than insurance contracts for the performance of work, supplies and services)
- Those specifically exempted from the tendering process (including those listed in section 938 M.C. (or section 573.3 V.S.A.) and contracts for professional services required in connection with an action before a court, body or person performing judicial or adjudicative functions;
- insurance contracts for the performance of work, supplies or services (including professional services) involving an expenditure of less than \$25,000.

## **12. Measures**

Where the Municipality chooses to award a contract by mutual agreement, the following measures shall apply, unless such measures are incompatible with the nature of the contract

### (a) Lobbying

Measures provided for in Articles 16 (Duty of information of elected officials and employees) and 17 (Training);

### b) Intimidation, influence peddling or corruption

Measure provided for in Article 19 (Whistleblowing);

### c) Conflict of interest

Action under Section 21 (Whistleblowing);

### (d) Amendment of a contract

Action under Section 27 (Amendment of Contract).

## **13. Information Document**

The Municipality shall publish, on its website, the information document relating to contract management attached as Schedule 1, so as to inform the public and potential contractors of the measures taken by the Municipality under this by-law.

## **SECTION II**

### **BID RIGGING**

#### **14. Penalty for Collusion**

A provision shall be inserted in the tender documents that the Municipality may reject a tender if it is clearly established that there has been collusion with any person in contravention of any law against bid-rigging.

#### **15. Declaration**

Every bidder shall attach to its bid, or at the latest prior to the award of the contract, a declaration solemnly affirming that its bid has been prepared and submitted without collusion, communication, agreement or arrangement with any person in contravention of any anti-bid-rigging law. This declaration shall be made on the form attached as Schedule 2.

## **SECTION III**

## **LOBBYISM**

### **16. Duty to Inform of Elected Officials and Employees**

Any member of the council or any civil servant or employee must remind any person who takes the initiative to contact him or her in order to obtain a contract, of the existence of the Lobbying Transparency and Ethics Act, when he or she believes that there is a contravention of this Act.

### **17. Training**

The Municipality shall encourage the participation of Council members, civil servants and employees in training designed to inform them of the legislative and regulatory provisions applicable to lobbying.

### **18. Declaration**

Every bidder must attach to its bid or, at the latest before the awarding of the contract, a solemn declaration stating that neither it nor any of its collaborators, representatives or employees has engaged in any communication of influence for the purpose of obtaining the contract in contravention of the Lobbying Transparency and Ethics Act or, if such communication of influence has taken place, that it has been registered in the Lobbyists Registry when such registration is required under the Act. This declaration must be made on the form attached in Schedule 2.

## **SECTION IV**

### **INTIMIDATION, INFLUENCE PEDDLING OR CORRUPTION**

#### **19. Reporting**

Any member of Council, any civil servant or employee, as well as any other person working for the Municipality must denounce, as soon as possible, any attempt at intimidation, influence peddling or corruption that he or she has witnessed in the course of his or her duties. This shall not be construed as limiting the right of the person concerned to file a complaint with the police or other public authority.

A member of Council shall make such disclosure to the Director General; the Director General to the Mayor; other officers and employees and any person working for the Municipality to the Director General. When the denunciation directly or indirectly involves the Mayor or the Director General, the denunciation is made to the one who is not involved. If both are involved, the information shall be given to the Deputy Mayor or to another member of Council who is not involved. The person receiving the report shall treat it with diligence and take appropriate action based on the nature of the situation reported.

#### **20. Statement**

All bidders must attach to their bids, or at the latest before the awarding of the contract, a solemn declaration stating that neither they nor any of their collaborators, representatives or employees have engaged, within the framework of the call for tenders, in acts of intimidation, influence peddling or corruption, against a member of Council, a civil servant or employee or any other person working for the Municipality. This declaration must be made on the form attached as Schedule 2

## **SECTION V**

## **CONFLICT OF INTEREST**

### **21. Disclosure**

Any member of Council, any civil servant or employee, as well as any other person working for the Municipality, involved in the preparation of contractual documents or in the awarding of contracts, must denounce, as soon as possible, the existence of any pecuniary interest in a legal person, company or enterprise likely to conclude a contract with the Municipality.

A member of Council shall make such disclosure to the Director General; the Director General to the Mayor; other officials and employees and any other person working for the Municipality to the Director General. When the denunciation directly or indirectly involves the Mayor or the Director General, the denunciation is made to the one who is not involved. If both are involved, the information shall be given to the Deputy Mayor or another member of Council who is not involved. The person receiving the report shall treat it with diligence and take appropriate action based on the nature of the situation reported.

### **22. Reporting**

When the Municipality uses a bid weighting and evaluation system, every member of the selection committee must solemnly declare in writing, before beginning the evaluation of bids, that he or she has no particular pecuniary interest, direct or indirect, with respect to the contract being evaluated. He shall also undertake not to disclose the mandate entrusted to him by the Municipality, nor to use, communicate, attempt to use or communicate, both during and after his mandate, any information obtained in the exercise or on the occasion of the exercise of his duties as a member of the selection committee. This declaration shall be made on the form attached as Appendix 3.

### **23. Minor pecuniary interest**

A minimal pecuniary interest is not covered by the measures described in sections 21 and 22.

## **SECTION VI**

### **IMPARTIALITY AND OBJECTIVITY OF THE TENDERING PROCESS**

#### **24. Person responsible for the call for tenders**

Every call for tenders shall identify a person in charge and shall provide that any potential bidder or any bidder shall address itself to this person in charge for any information or clarification relating to the call for tenders.

#### **25. Questions from Bidders**

The Tender Officer shall compile the questions asked by each Tenderer during the tender process and issue an addendum if deemed necessary, so that all Tenderers receive answers to questions asked by others.

The Tenderer has full discretion to determine the relevance of the questions asked and those requiring a response and may consolidate and rephrase certain questions for the purpose of providing responses to Tenderers.

#### **26. Whistleblowing**

Any member of Council, any civil servant or employee, as well as any other person working for the Municipality, must, as soon as he or she is informed, denounce the existence of any situation, other than a conflict of interest, likely to compromise the impartiality and objectivity of the call for tenders process and the management of the resulting contract.

A member of Council shall make such disclosure to the Director General; the Director General to the Mayor; other officials and employees, as well as any other person working for the Municipality, to the Director General. When the denunciation directly or indirectly involves the Mayor or the Director General, the denunciation is made to the one who is not involved. If both are involved, the information shall be given to the Deputy Mayor or another member of Council who is not involved. The person receiving the report shall deal with it expeditiously and take appropriate action based on the nature of the situation reported.

## **SECTION VII**

### **AMENDMENT OF CONTRACT**

#### **27. Amendment of contract**

Any amendment to a contract that has the effect of increasing its price must be justified by the person responsible for managing the contract, taking into account the rules applicable to authorize such an amendment.

The Municipality may not modify a contract awarded following a call for tenders, except in the case where the modification constitutes an accessory to the contract and does not change its nature.

#### **28. Site Meetings**

When justified by the nature of the work, the Municipality encourages the holding of regular site meetings to ensure the follow-up of the execution of the contract.

## **CHAPTER IV**

### **ADMINISTRATIVE AND FINAL PROVISIONS**

#### **29. Application of the by-law**

The application of this by-law is the responsibility of the Director General of the Municipality. The latter is responsible for the preparation of the report which must be submitted annually to the Council concerning the application of this by-law, in accordance with article 938.1.2 C.M. (or article 573.3.1.2. L.C.V.).

#### **30. Repeal of Contract Management Policy**

This by-law replaces and repeals the Contract Management Policy adopted by Council on and deemed, as of January 1, 2018, to be a contract management by-law pursuant to section 278 of the Act primarily to recognize municipalities as local governments and to increase their autonomy and powers as such (2017, c.13).

#### **31. Coming into Force and Publication**

This by-law shall come into force in accordance with the law and shall be published on the Municipality's website. In addition, a copy of this bylaw is transmitted to MAMOT. Adopted at Clarendon this 27day of September 2022

Mayor \_\_\_\_\_ (Edward Walsh)

Director General and Secretary-Treasurer \_\_\_\_\_(Patricia Hobbs)

Notice of motion: September 13, 2022

Presentation of the draft by-law : September 13, 2022

Public Notice: September 14, 2022

Adoption of the by-law :September 27, 2022

Notice of promulgation : September 28, 2022

Transmission to MAMOT : September 29,2022