

BY-LAW NO. 2019-05 REGARDING CONTRACT MANAGEMENT

WHEREAS a Contract Management Policy was adopted by the Municipality on December 6, 2010, in accordance with Article 938.1.2 of the Municipal Code of Quebec (hereinafter called "M.C.");

WHEREAS Article 938.1.2 M.C. was replaced on January 1, 2018, obliging municipalities, as of this date, to adopt a by-law regarding contract management, the current policy of the Municipality however being deemed to be such a by-law;

WHEREAS the by-law must at least provide for measures with respect to six objects identified in the Act and, in respect of contracts involving an expenditure of \$ 25,000 or more, but below the threshold imposed by the Minister requiring public invitation to tender and which may be passed by agreement under the rules adopted by the Municipality, provide for measures to ensure the rotation of potential contractors;

WHEREAS the Municipality wishes, as permitted by the 4th paragraph of Article 938.1.2 M.C., to provide contracting rules that involve an expenditure of at least \$ 25,000 and below the threshold requiring the public invitation to tender and, consequently, Article 936 M.C. (invitation to tender) no longer applies to these contracts from the entry 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 has been given and a draft by-law was presented at the meeting of March 4, 2019;

WHEREAS the Director General and Secretary-Treasurer states that the purpose of this by-law is to provide for contract management measures for any contract to be concluded by the Municipality, including certain contracting rules for contracts involving an expense of at least \$ 25,000 and below the threshold requiring an invitation for tender;

Consequently,
It is moved by Councillor Stacey Belknap-Keet;
Seconded by Councillor Stéphane Richard;

AND UNANIMOUSLY RESOLVED THAT THIS BY-LAW BE ADOPTED AND ENACTED AND ORDERED AS FOLLOWS:

CHAPTER I

DECLARATORY AND INTERPRETATIVE PROVISIONS

SECTION I

DECLARATORY PROVISIONS

1. Purpose of this by-law

The present by-law's objective is to :

- a) provide for measures for the awarding and management of contracts awarded by the Municipality, in accordance with Article 938.1.2 M.C.;
- b) provide for contracting rules that involve an expenditure of at least \$ 25,000 and that are below the threshold requiring a public invitation for tender;

2. Scope of application

This by-law applies to any contract concluded by the Municipality, including a contract that is not referred to in any of the paragraphs of the first section of paragraph 1 of Article 935 or in Article 938.0.2 M.C.

This by-law applies regardless of the authority that grants the contract, whether it is the council or any person to whom the council has delegated the spending power and the authority to enter into contracts on behalf of the Municipality.

SECTION II

INTERPRETATIVE PROVISIONS

3. Interpretation of the text

This by-law must be interpreted in accordance with the principles of the Interpretation Act (RLRQ, c. I-16).

It must not be interpreted as derogating from the mandatory provisions of the laws governing municipal contracts, unless such laws expressly permit derogation by the present by-law, including, for example, some of the 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 the other bodies that may investigate and act with regard to the objects targeted by certain measures provided for in this by-law. This includes measures to prevent acts of intimidation, corruption, bribery, bid-rigging, and those aimed at ensuring compliance with the *Transparency and Ethics Act for Lobbyists and the Lobbyists' Code of Conduct* adopted under this Act.

5. Special rules of interpretation

The present by-law must not be interpreted :

- a) in a restrictive or literal manner;
- b) as restricting the possibility for the Municipality to contract by mutual agreement, in cases where the law allows it to do so.;

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

- in accordance with the principles set out in the preamble to the Act, which primarily recognize that municipalities are local governments and thereby increase their autonomy and powers (2017, c.13) (Bill 122) recognizing municipalities as being governments of proximity and to the elected officials, the legitimacy necessary to govern according to their attributions;
- so as 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 contract expenditure to be incurred, considering the costs, the time required and the size of the Municipality.

6. Terminology

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

« <i>Call for tenders</i> » :	Invitation to tender or public invitation required by Articles 935 and the following, M.C., or the by-law adopted pursuant to Article 938.0.1 M.C. are excluded from the expression "call for tenders", the price requests that are formulated where no call for tenders is required by law or by this by-law.
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« Bidder » : Anyone who submits an offer during a process of a call for tenders.

CHAPTER II

RULES FOR AWARDING CONTRACTS AND ROTATION

7. Generalities

The Municipality respects the contracting rules provided for in the laws that govern it, including the M.C., in particular:

- a) it shall proceed by invitation to tender when the law or by-law adopted pursuant to Article 938.0.1 M.C. imposes such a call for tenders, unless a particular provision stipulates otherwise, that is provided for in this by-law;
- b) it shall proceed by public invitation to tender in all cases where a public call for tenders is required by law or by the by-law adopted pursuant to Article 938.0.1 M.C.;
- c) it may proceed by mutual agreement in cases where the law or this by-law permits it to do so.

Nothing in this by-law may have the effect of limiting the possibility for the Municipality to use any method of calling for competition for the awarding of a contract, whether by public call for tenders, by invitation or by request for price, even if it can legally proceed by mutual agreement.

8. Contracts that may be concluded by mutual agreement

Subject to Article 11, any contract involving an expenditure of at least \$ 25,000, but less than that shown in the table below, may be concluded by mutual agreement by the Municipality:

TYPE OF CONTRACT	AMOUNT OF THE EXPENSE
Insurance	Threshold obliging the public call for tenders
Execution of work or supply of material or materials	Threshold obliging the public call for tenders
Supply of services (including professional services)	Threshold obliging the public call for tenders

9. Rotation - Principles

The Municipality shall encourage, if possible, rotation among potential suppliers, with respect to contracts that may be entered into by mutual agreement under Article 8. The Municipality, in making the decision in this regard, considers the following principles:

- a) the degree of expertise needed;
- b) the quality of the work, services or materials already delivered to the Municipality;
- c) the delays inherent to the execution of the work, the supply of material or materials or the provision of services;
- d) the quality of the goods, services or works sought;

- e) the delivery terms;
- f) the maintenance services;
- g) the required experience and financial capacity;
- (h) the price competitiveness, 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 market.

10. Rotation - Measures

For the purpose of ensuring the implementation of the rotation provided for in Article 9, the Municipality shall apply, to the extent possible and subject to 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 its territory or, as the case may be, the territory of the RCM or any other geographic region that will be considered relevant given the nature of the contract to intervene;
- b) once the suppliers have been identified and the principles set out in Article 9 are considered, the rotation between them must be encouraged, unless there are grounds pertaining 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 Annex 4;
- e) for the categories of contracts, it determines, for the purpose of identifying potential suppliers, the Municipality may also establish a list of suppliers. The rotation among the suppliers appearing on this list, if any, shall be favored, subject to the provisions of paragraph (b) of this article.

CHAPTER III

MEASURES

SECTION I

MUTUAL AGREEMENT CONTRACTS

11. Generalities

For certain contracts, the Municipality is not subject to any special competitive bidding procedure (public call for tenders or by invitation). This by-law may not have the effect of restricting the possibility for the Municipality to proceed by mutual agreement for these contracts. These include contracts:

- which, by their nature, are not subject to any tendering process (contracts other than insurance contracts, supply of material or materials, services and execution of works);

- expressly exempted from the tendering process (in particular, those listed in Article 938 M.C. and the professional services contracts necessary for an appeal to a court, body or person exercising adjudicative or judicial functions;
- insurance, for the performance of work, for the supply of material or materials or services (including professional services) that involve an expenditure of less than \$ 25,000.

12. Measures

When the Municipality chooses to grant, by mutual agreement, one or the other of the contracts mentioned in Article 11, the following measures apply, unless these measures are not compatible with the nature of the contract:

- a) Lobbying
 - Measures provided for in Articles 16 (duty to inform elected officials and employees) and 17 (training);
- b) Intimidation, bribery or corruption
 - Measure provided for in Article 19 (denunciation);
- c) Conflict of interest
 - Measure provided for in Article 21 (denunciation);
- d) Modification of a contract
 - Measure provided for in Article 27 (modification of a contract).

13. Information document

The Municipality must publish, on its website, the contract management information document attached to Annex 1, in order to inform the public and potential contractors of the measures it has taken under this by-law.

SECTION II

BID RIGGING

14. Sanction if collusion

Must be inserted in the tender documents, a provision providing for the possibility for the Municipality to reject a bid if it is clearly established that there has been collusion with any person in violation of any law aimed at combating bid rigging.

15. Declaration

All bidders must enclose with their bid, or at the latest before the awarding of the contract, a declaration solemnly affirming that their bid has been prepared and filed without any collusion, communication, agreement or arrangement with any person in violation of any law designed to combat bid-rigging. This declaration must be made on the form attached as Annex 2.

SECTION III

LOBBYING

16. Duty to inform elected officials and employees

Any member of the council or any officer or employee shall remind any person who takes the initiative of contacting her / him to obtain a contract, the existence of the *Lobbying Transparency and Ethics Act*, when she / he believes that there is a violation of this law.

17. Training

The Municipality favors the participation of council members and public servants and employees to a training designed to provide them with information on applicable laws and regulations relating to lobbying.

18. Declaration

Any bidder must enclose with her / his tender or, at the latest before the awarding of the contract, a declaration solemnly affirming that neither she / he nor any of her / his collaborators, representatives or employees has engaged in communication of influence for the purposes of the contract, in violation of the *Lobbying Transparency and Ethics Act* or, if such disclosure of influence has taken place, that it was made after any registration has been made in the Lobbyists Registry when it is required by law. This declaration must be made on the form attached as Annex 2.

SECTION IV

INTIMIDATION, BRIBERY OR CORRUPTION

19. Denunciation

Any member of the council, any public servant or employee, as well as any other person working for the Municipality must denounce, as soon as possible, any attempt of intimidation, bribery or corruption which she / he has witnessed within the framework of her / his functions. This measure should not be interpreted as limiting the right of the person concerned to lodge a complaint with a police service or other public authority.

A member of council makes this denunciation to the Director General; the Director General to the Mayor; other public servants and employees as well as any person working for the Municipality, 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. The Director General or the Mayor must deal with the denunciation diligently and take the appropriate measures depending on the nature of the situation complained of, including reporting the situation to any other competent authority.

20. Declaration

Each bidder must enclose with her / his tender, or at the latest before the awarding of the contract, a declaration solemnly affirming that neither she / he nor any of her / his collaborators, representatives or employees has engaged, in the process of the call for offers, in acts of intimidation, bribery or corruption, against a member of the council, a public servant, officer or employee or any other person working for the Municipality. This declaration must be made on the form attached as Annex 2.

SECTION V

CONFLICT OF INTEREST

21. Denunciation

Any member of the council, any public 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 of a legal person, society or company likely to conclude a contract with the Municipality.

A member of the council makes this denunciation to the Director General; the Director General to the Mayor; other public servants 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 is reported to the acting mayor or other non-involved municipal council member. The person who receives the information must treat it with diligence and take the appropriate measures according to the nature of the situation complained of.

22. Declaration

When the Municipality uses a system of weighing and evaluation of the tenders, all members of the selection committee must solemnly declare in writing, before starting the evaluation of the tenders, that she / he has no particular pecuniary interest, direct or indirect, in respect of the contract being evaluated. She / he must also undertake to not divulge the mandate entrusted to her / him by the Municipality, as well as to not use, communicate, attempt to use or communicate, both during her / his term of office and afterwards, information obtained in the course of or in connection with the performance of her / his duties as a member of the selection committee. This declaration must be made on the form attached as Annex 3.

23. Minimal pecuniary interest

The minimal pecuniary interest is not affected by the measures described in Articles 21 and 22.

SECTION VI

IMPARTIALITY AND OBJECTIVITY OF THE CALL FOR TENDERS PROCESS

24. Person responsible for the call for tenders

Any call for tenders identifies a person responsible and provides that any potential bidder or bidder must contact that sole person for any information or clarification regarding the call for tenders.

25. Questions from bidders

The person responsible for the call for tenders compiles the questions posed by each bidder during the bidding process and, if she / he deems it necessary, issues an addendum, so that all bidders can obtain the answers to questions asked by others.

The person responsible for the call for tenders has full discretion to determine the relevance of the questions asked and those that require an answer and may consolidate and reword certain questions for the purpose of forwarding responses to bidders.

26. Denunciation

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

A member of council makes this denunciation to the Director General; the Director General to the Mayor; other public servants 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 is reported to the acting mayor or other non-involved municipal council member. The person who receives the information must treat it with diligence and take the appropriate measures according to the nature of the situation complained of.

SECTION VII

MODIFICATION OF A CONTRACT

27. Modification of a contract

Any modification to a contract that has the effect of increasing the price must be justified by the person responsible for the management of the contract, by considering the applicable rules to authorize such a modification.

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

28. Work site meetings

When justified by the nature of the work, the Municipality encourages the holding of regular work site meetings in order to monitor the execution of the contract.

CHAPITRE IV

ADMINISTRATIVE AND FINAL DISPOSITIONS

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 preparing the report to be submitted annually to the Council concerning the application of this by-law, in accordance with Article 938.1.2 M.C..

30. Repeal of the contract management policy

This by-law replaces and repeals the Contract Management Policy adopted by Council on December 6, 2010 and deemed, since January 1, 2018, a By-law regarding Contract Management pursuant to Article 278 P.L. 122.

31. Coming into force and publication

This by-law comes into force in accordance with the Law and is published on the website of the Municipality. In addition, a copy of this by-law is sent to the MAMOT.

Adopted in Ayer's Cliff, this April 1, 2019

Kimball Smith
Director General / Secretary-Treasurer

Vincent Gérin
Mayor

Notice of motion : March 4, 2019

Presentation of draft by-law March 4, 2019:

Adoption of by-law : April 1, 2019

Notice of coming into force : April 2, 2019

Transmission to MAMOT : April 4, 2019

ANNEX 1

INFORMATION DOCUMENT (Contract Management)

The Municipality has adopted a By-law regarding Contract Management providing for measures to:

- promote compliance with applicable laws designed to combat bid-rigging;
- ensure compliance with the *Lobbying Transparency and Ethics Act and the Lobbyists' Code of Conduct* adopted under this Act;
- prevent acts of intimidation, bribery or corruption;
- prevent situations of conflict of interest;
- prevent any other situation that could compromise the impartiality and objectivity of the bid solicitation process and resulting contract management;
- regulate the making of any decision that has the effect of authorizing the modification of a contract;
- ensure, as much as possible, and in accordance with the criteria and principles set out in the By-law, the rotation of potential contractors with respect to contracts involving an expense of \$ 25,000 or more but below the threshold for a public call for tenders and which may be made by mutual agreement, in accordance with the By-law.

This By-law may be consulted by clicking on the following link : www.ayerscliff.ca

Anyone intending to deal with the Municipality is invited to read the By-law Regarding Contract Management and to verify with the Director General and Secretary-Treasurer if there are any questions in this regard.

Furthermore, any person who has information regarding the non-respect of any of the measures contained therein is invited to inform the Director General and Secretary-Treasurer or the Mayor. The latter will, if necessary, take appropriate measures or refer the complaint and the documentation to the competent authorities.


ANNEX 2

**DECLARATION OF THE BIDDER
(Contract Management)**

I, the undersigned, bidder or representative of the bidder _____, solemnly declare that to the best of my knowledge:


- a) this bid has been prepared and filed without any collusion, communication, understanding or arrangement with any other person in violation of any law designed to combat bid-rigging;
- b) neither I nor any of the bidder's collaborators, representatives or employees have given us any evidence of influence for the purposes of obtaining the contract, or, if such communication of influence has taken place, I declare that this communication was made after any registration required by law in the Lobbyists' register had been made;
- c) neither I nor any of the bidder's employees, representatives or employees engage in acts of intimidation, bribery or corruption against any member of Council, any officer or employee, or any other person working for the Municipality in connection with this call for tenders.

AND I SIGNED :



Solemnly affirmed before me at _____

This _____ day of _____ 2019



Commissioner of Oaths for Quebec

ANNEX 3


DECLARATION OF A MEMBER OF THE SELECTION COMMITTEE

I, the undersigned, a member of the selection committee for _____,
(identify the contract)

solemnly declare that I have no particular pecuniary interest, direct or indirect, with respect to this contract.


I undertake not to divulge the mandate entrusted to me by the Municipality, nor to use, communicate, attempt to use or communicate, both during my term of office and afterwards, information obtained in the course of or in connection with the performance of my duties as a member of the selection committee.

AND I SIGNED :



Solemnly affirmed before me at _____

This _____ day of _____ 2019



Commissioner of Oaths for Quebec

ANNEX 4

ANALYSIS FORM FOR THE CHOICE OF AWARDING METHOD

1	BESOINS DE LA MUNICIPALITÉ		
	Objet du contrat		
	Objectifs particuliers (économies souhaitées, qualité, environnement, etc.)		
	Valeur estimée de la dépense (incluant les options de renouvellement)		Durée du contrat
2	MARCHÉ VISÉ		
	Région visée		Nombre d'entreprises connues
	Est-ce que la participation de toutes les entreprises connues est souhaitable? Oui <input type="checkbox"/> Non <input type="checkbox"/>		
	Sinon, justifiez.		
	Estimation du coût de préparation d'une soumission		
	Autres informations pertinentes		
3	MODE DE PASSATION CHOISI		
	Gré à gré <input type="checkbox"/> Appel d'offres sur invitation <input type="checkbox"/>		
	Appel d'offres public régionalisé <input type="checkbox"/> Appel d'offres public ouvert à tous <input type="checkbox"/>		
	Dans le cas d'un contrat passé de gré à gré, les mesures du RGC pour assurer la rotation sont-elles respectées? Oui <input type="checkbox"/> Non <input type="checkbox"/>		
	Si oui, quelles sont les mesures concernées?		
	Sinon, pour quelle raison la rotation n'est-elle pas envisageable?		
4	SIGNATURE DE LA PERSONNE RESPONSABLE		
	<div><div>Prénom, nom</div><div>Signature</div><div>Date</div></div>		
	<p>* Une version Word du formulaire est offerte sur le site Web du Ministère de sorte que le contenu pourra être adapté aux besoins de la municipalité.</p>		