

## BY-LAW NUMBER 291-2021

### BY-LAW REGARDING CONTRACT MANAGEMENT

**WHEREAS** a Contractual Management Policy was adopted by the Municipality on December 6, 2010, by resolution no. 175-2010, in accordance with article 938.1.2 of the Municipal Code of Quebec (hereinafter called "C.M.");

**WHEREAS** article 938.1.2 CM was replaced on January 1, 2018, obliging municipalities, as of the latter date, to adopt a by-law on contract management, the current policy of the Municipality being however deemed to be such by-law;

**ATTENDU QUE** le conseil désire procéder à l'adoption d'un règlement concernant la gestion contractuelle pour remplacer la résolution no 175-2010;

**WHEREAS** the Council wishes to proceed with the adoption of a by-law regarding contract management to replace resolution no 175-2010;

**WHEREAS** this by-law must provide in particular:

- measures to ensure that any tenderer or one of its representatives has not communicated or attempted to communicate, for the purpose of influencing him, with one of the members of the selection committee in relation to the call for tenders for which he submitted a bid;
- measures promoting compliance with applicable laws aimed at combating bid-rigging;
- measures to ensure compliance with the Lobbying Transparency and Ethics Act and the Lobbyists' Code of Conduct adopted under this Act;
- measures aimed at preventing acts of intimidation, influence peddling or corruption;
- measures aimed at preventing situations of conflict of interests;
- measures intended to prevent any other situation likely to compromise the impartiality and objectivity of the bid solicitation process and the management of the resulting contract;
- measures aimed at regulating the taking of any decision having the effect of authorizing the modification of a contract;

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

**WHEREAS** the Act establishing a new development regime in flood-prone areas of lakes and watercourses, temporarily granting municipalities powers to meet certain needs and amending various provisions (LQ 2021, chapter 7) has been sanctioned March 25, 2021;

**WHEREAS** in the context of the COVID-19 pandemic, article 124 of this law provides that for a period of three (3) years, from June 25, 2021, the municipalities will have to take measures to promote Québec companies for any contract that involves an expenditure below the threshold decreed for the expenditure of a contract that can only be awarded after a public tender request;

**WHEREAS** a notice of motion was given and a draft by-law was presented and tabled at the sitting of May 10, 2021;

**WHEREAS** any municipality must make its by-law accessible at all times by publishing it on the website where it publishes the mention and the hyperlink referred to in the second paragraph of article 961.4.

**THEREFORE, IT IS ORDERED AND STATUSED BY THIS REGULATION, AS FOLLOWS:**

## **CHAPTER I**

### **DECLARATORY AND INTERPRETATIVE PROVISIONS**

#### **SECTION I**

##### **DECLARATORY PROVISIONS**

###### **1. Preamble**

The preamble to this By-law forms part of it as if it were reproduced below at length.

###### **2. Purpose of the By-law**

The purpose of this by-law is to provide for measures for the granting and management of contracts granted by the Municipality, in accordance with article 938.1.2 CM The whole in order to promote transparency in the granting of municipal contracts while respecting the rules relating to the awarding of such contracts provided for in the laws governing the operation of municipal bodies.

###### **3. Scope**

This by-law applies to any contract entered into by the Municipality, including a contract that is not referred to in one of the subparagraphs of the first paragraph of paragraph 1 of article 935 or in articles 938.0.1 and 938.0. 2 CM

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

The agents, contractors and consultants retained by the municipality, whatever their mandate, are required to comply with this by-law in the exercise of the mandate entrusted to them.

This By-law is an integral part of any invitation to tender document, with which tenderers must comply.

This by-law meets an objective of transparency and sound management of public funds with regard to the citizens of the municipality. They may submit to the Director General any worrying violation of this by-law.

## **SECTION II**

### **INTERPRETATIVE PROVISIONS**

#### **4. 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 allowing derogations from the mandatory provisions of the laws governing municipal contracts, unless these laws expressly allow derogations from them by this by-law.

#### **5. Other bodies or organizations**

The Municipality recognizes the importance, role and powers granted to other bodies that can investigate and act with regard 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 *Law on transparency and ethics in matters of lobbying* and the *Lobbyists' Code of Conduct* adopted under this Act.

#### **1. Règles particulières d'interprétation**

Les mesures prévues au présent règlement doivent s'interpréter :

- a) selon les principes énoncés au préambule de la *Loi visant principalement à reconnaître que les municipalités sont des gouvernements de proximité et à augmenter à ce titre leur autonomie et leurs pouvoirs* (2017, c. 13) (Projet de loi 122) reconnaissant notamment les municipalités comme étant des gouvernements de proximité et aux élus, la légitimité nécessaire pour gouverner selon leurs attributions;
- b) de façon à respecter le principe de la proportionnalité et ainsi assurer que les démarches liées aux mesures imposées sont proportionnées à la nature et au montant de la dépense du contrat à intervenir, eu égard aux coûts, au temps exigé et à la taille de la Municipalité.

#### **6. Special rules of interpretation**

This By-law must not be interpreted:

- a) restrictively or literally;
- 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:

- a) in accordance with the principles set out in the preamble of the *Act aimed primarily at recognizing that municipalities are local governments and increasing their autonomy and powers as such* (2017, c. 13) (Bill 122) recognizing in particular the municipalities as local governments and elected officials, the necessary legitimacy to govern according to their attributions;
- b) 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 expenditure of the contract to be incurred, having regard to the costs, the time required and the size of the municipality.

## 7. **Terminology**

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

« Call for tenders »: Public call for tenders or by invitation required by articles 935 and following C.M. or a by-law adopted under this law. Excluded from the expression « call for tenders » are requests for prices which are made when no call for tenders is required by law or by this By-law.

« Bidder »: Anyone who submits a bid during a call for tender process.

## **CHAPTER II**

### CONTRACT AWARDING RULES

## 8. **General**

The Municipality respects the contracting rules provided for in the laws which govern it, including the C.M. . More specifically:

- a) it proceeds by invitation to tender when the law or regulation adopted under article 938.0.1 CM requires such a call for tenders, unless there is a specific provision to the contrary, provided for in this By-law;
- b) it proceeds by public call for tenders in all cases where a public call for tenders is required by law or by the regulation adopted under article 938.0.1 C.M .;
- c) it may proceed by mutual agreement in cases where the law or this By-law allows 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 competition for the award of a contract, whether by public call for tenders, by invitation or by a request for a price, even if it can legally proceed by mutual agreement.

### **8.1 This article is effective from June 25, 2021, or from the date of entry into force of this Regulation, whichever is later, and remains in effect until June 25, 2024.**

**In the context of the award of any contract that involves expenditure below the decreed threshold of the expenditure of a contract which can only be awarded after a public call for tenders, the municipality must favor Québec goods and services as well as suppliers, insurers and contractors who have an establishment in Quebec.**

**An establishment in Quebec, within the meaning of this article, is any place where a supplier, an insurer or a contractor carries out his activities on a permanent basis which is clearly identified with his name and accessible during normal office hours.**

Quebec goods and services are goods and services, the majority of which of their design, manufacture, assembly or realization are made for the most part from an establishment located in Quebec.

The Municipality, in making a decision regarding the granting of a contract referred to in this article, applies the following two concepts:

1. At the same price, the Municipality may promote the granting of a contract to a company having an establishment in the Argenteuil RCM and offering Quebec goods and services;
2. With equal competence or equal quality, the Municipality may favor the award of a contract to a company having an establishment in Quebec and offering Quebec products and services when the price submitted by the latter shows a difference of less than 10 % with the lowest tender, subject to the provisions applicable to a contract which can only be awarded after a public tender request.

## **CHAPTER III**

### **MEASURES**

#### **SECTION I**

##### **MUTUAL AGREEMENT CONTRACTS**

#### **9. General**

For some contracts, the Municipality is not subject to any particular competitive 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 include, in particular, contracts:

- which, by their nature, are not subject to any tendering process (contracts other than insurance contracts for the execution of works, supplies and services);
- expressly exempted from the call for tenders process (in particular those listed in article 938 CM and contracts for professional services necessary in the context of an appeal before a court, a body or a person exercising judicial or jurisdictional functions ;
- insurance, for the performance of work, supply or services (including professional services) that involve an expenditure of less than \$ 25,000.

#### **10. Measures**

When the Municipality chooses to award a contract by mutual agreement, the following measures apply, unless these measures are incompatible with the nature of the contract:

- a) Lobbying
  - Measures provided for in Articles 14 and 15;
- b) Intimidation, influence peddling or corruption
  - Measure provided for in Article 17;

- c) Conflict of interest
  - Measure provided for in Article 19;
- d) Modification of a contract
  - Measure provided for in Article 33.

#### **11. Information document**

The Municipality must publish, on its website, the information document relating to contractual management attached to Annex 1, so as to inform the population and any contractors of the measures taken by it within the framework of this by-law.

### **SECTION II**

#### **BID-RIGGING**

#### **12. Penalty if collusion**

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

#### **13. Declaration**

All tenderers must attach to their tender, or at the latest before the award of the contract, a declaration solemnly affirming that their tender has been prepared and filed without any collusion, communication, agreement or arrangement with any person in contravention to any law aimed at combating bid-rigging. This declaration must be made on the form attached in Annex 2.

### **SECTION III**

#### **LOBBYISM**

#### **14. Information duty of elected officials and employees**

Any member of the council or any official or employee must remind anyone who takes the initiative to communicate with him in order to obtain a contract, of the existence of the *Lobbying Transparency and Ethics Act*, when he considers that there is a violation of this law.

#### **15. Training**

The Municipality favors the participation of council members and officials and employees in training intended to inform them about the legislative and regulatory provisions applicable to lobbying.

#### **16. Declaration**

Any tenderer must include with his tender or, at the latest before the award of the contract, a declaration solemnly affirming that neither he nor any of his collaborators, representatives or employees has engaged in any communication of influence for the purposes of obtaining the contract in contravention of the *Lobbying Transparency and Ethics Act* or, if such communication of influence took place, that it was the

subject of an entry in the register of lobbyists when such registration is required by law. This declaration must be made on the form attached in Annex 2.

## **SECTION IV**

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

#### **17. Denunciation**

Any member of the council, any official 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 has witnessed in the context of its 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 the council makes this denunciation to the director general; the director general to the mayor; other officials and employees as well as 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 they are both involved, the denunciation is made to the acting mayor or another member of the municipal council not involved. The person who receives the denunciation must treat it with diligence and take the appropriate measures according to the nature of the situation denounced.

#### **18. Declaration**

Any tenderer must enclose with his tender, or at the latest before the award of the contract, a declaration solemnly affirming that neither he nor any of his collaborators, representatives or employees has surrendered, within the framework of the call for tender offers, acts of intimidation, influence peddling or corruption, against a member of the council, an official or employee or any other person working for the Municipality. This declaration must be made on the form attached in Annex 2.

## **SECTION V**

### **CONFLICTS OF INTEREST**

#### **19. Denunciation**

Any member of the council, any official 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 interest pecuniary in a legal person, company or business likely to enter into a contract with the Municipality.

A member of the council makes this denunciation to the directeur general; the director general to the mayor; other officials and employees as well as any other person working for the Municipality, to the general manager. 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 they are both involved, the denunciation is made to the acting mayor or another member of the municipal council not involved. The person who receives the denunciation must treat it with diligence and take the appropriate measures according to the nature of the situation denounced.

#### **20. Declaration**

When the Municipality uses a system of weighting and evaluation of tenders, any member of the selection committee must solemnly declare in writing, before beginning the evaluation of tenders, that he has no particular pecuniary interest, direct or indirect, with respect to the contract being evaluated. He must also commit to not to disclose the mandate entrusted to him by the Municipality, as well as not to use, communicate, attempt to use or communicate, both during his mandate and after it, the information obtained in the exercise or on the occasion of the exercise of his functions as a member of the selection committee. This declaration must be made on the form attached in Annex 3.

#### **21. Minimal pecuniary interest**

The minimal pecuniary interest is not targeted by the measures described in Articles 19 and 20.

### **SECTION VI**

#### **CONFIDENTIALITY, DISCRETION, IMPARTIALITY AND OBJECTIVITY OF THE TENDER PROCESS**

#### **22. Confidentiality and discretion**

The members of the council, the employees and the officers of the municipality must, within the framework of any tendering or contract award process, even before or after said processes, exercise discretion and maintain, to the extent possible, the confidentiality of information to their knowledge regarding such a process.

#### **23. Disclosure prohibited**

It is prohibited for anyone to disclose, before the opening of tenders and in accordance with the requirements of the Act, any information allowing to know the number or identity of the persons who submitted a tender or who requested a copy of the request for tender or of a document to which it refers.

#### **24. Obligation of confidentiality of agents and consultants responsible for drafting documents or assisting the municipality in the context of the call for tenders process**

Where applicable, any agent or consultant tasked by the municipality with drafting tender documents or assisting it in such a process must, as far as possible, preserve the confidentiality of its mandate, all work carried out within the framework of this mandate and any information brought to its attention in the context of its execution.

#### **25. Choice of invited tenderers**

In order to maintain the confidentiality of the identity of the bidders before the opening of tenders, the municipal council delegates to the director general the power to choose the invited bidders within the framework of a call for tenders by invitation or within the framework of a private contract.



**26. Delegation of the power to appoint the members of the selection committee responsible for analyzing the offers**

In order to maintain the confidentiality of the identity of the members of the selection committee, the municipal council delegates to the general manager the power to appoint any member of the selection committee responsible for analyzing the offers within the framework of a call for tenders using criteria other than the price alone according to the process prescribed by law.

**27. Responsible for the call for tenders**

Any call for tenders identifies a person in charge and provides that any potential bidder or any bidder must address that person alone to obtain any information or clarification relating to the call for tenders.

**28. Questions from tenderers**

The person in charge of the call for tenders compiles the questions asked by each of the bidders during the call for tenders process and issues, if he deems it necessary, an addendum, so that all the bidders obtain the answers to questions asked by others.

The person in charge of the call for tenders has full discretion to judge the relevance of the questions asked and those requiring a response and he may group and reformulate certain questions for the purpose of transmitting the answers to the bidders.

**29. Denunciation**

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

A member of the council makes this denunciation 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 they are both involved, the denunciation is made to the acting mayor or another member of the municipal council not involved. The person who receives the denunciation must treat it with diligence and take the appropriate measures according to the nature of the situation denounced.

**30. Complaints management**

The municipality delegates responsibility for handling complaints to the director general. His role is to receive complaints about suspicious practices, situations of collusion, rigging, influence peddling, intimidation and corruption, both from citizens and from bidders who feel aggrieved. In the event that the complaint involves the director general, it is made to the mayor.

The director general may submit any complaints of suspicious practice or illegal acts to the MAMH complaints coordinator. Entities involved in handling complaints must maintain the confidentiality of the identity of the person who lodged a complaint.

**SECTION VII**

**GRANT OF CONTRACTS**

### **31. Right to reject one or all the bids**

In the event that the bids received are much higher than the rates usually present on the market or in relation to the municipality's cost estimate or if the bids submitted are unreasonable or clearly too low, the municipality reserves the right not to accept them. Bids are considered too low when they seriously risk compromising the performance and / or the very quality of the contract to be awarded.

### **32. Division of contracts**

The municipality only resorts to the division of a contract into several contracts in similar matters to the extent permitted by article 938.0.3 of the Municipal Code, or in cases where this division is justified by reasons of sound administration.

### **33. Modification of a contract**

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

The Municipality cannot 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.

The modification must not be an element that could predictably be included in the initial contract. Non-modification of the contract is the rule, and modification, the exception.

For any contract modification request, person responsible for the project must submit a written request indicating the reasons justifying this modification and submit it to the director general.

- For any modification (s) to a contract totaling an expenditure of less than 5% of the cost of the original contract, up to a maximum of \$ 5,000, and insofar as the director general has been delegated the power to authorize such expenditure by the by-law providing for the delegation of expenditure, such modification to the contract may be authorized in writing by the director general. This writing must indicate the reasons justifying the authorization of this modification and be submitted to the municipal council.
- For any modification (s) to a contract totaling an expenditure equal to or greater than 5% of the cost of the original contract, the director general must produce a recommendation to the municipal council. In such a situation, modification of the contract is only permitted following a resolution authorizing it by the municipal council.

### **34. Site meetings**

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

## **CHAPITRE IV**

### **FINAL MANAGEMENT DISPOSITIONS**

**35. Application of the by-law**

The application of this by-law is under the responsibility of the director general of the Municipality. The latter is responsible for preparing the report that must be filed annually with the council concerning the application of this by-law, in accordance with article 938.1.2 C.M.

**36. Repeal of the Contract management policy**

This by-law replaces and repeals resolution no. 175-2010 as amended.

**37. Entry into force and publication**

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

**Notice of motion,  
Tabling of the draft by-law,  
Adoption of the by-law,  
Entry into force,  
Transmission to MAMH**

## ANNEX 1

### INFORMATION DOCUMENT (Contract management)

The Municipality has adopted By-law no. 291-2020 on contract management providing for measures aiming to:

- promote compliance with applicable laws aimed at combating 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, influence peddling 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 the management of the resulting contract;
- supervise the making of any decision having the effect of authorizing the modification of a contract;

This By-law may be viewed by clicking on the link below:

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Anyone who intends to enter into a contract with the Municipality is invited to read the By-law on contract management and to inquire with the director general if they have any questions in this regard.

In addition, anyone who has information relating to non-compliance with any of the measures contained therein is invited to report it to the director general or the mayor. The latter will, if necessary, take the necessary measures or refer the complaint and the documentation to the competent authorities.

**ANNEX 2**

**DÉCLARATION BY THE TENDERER  
(Contract management)**

I, the undersigned, tenderer or representative of the tenderer \_\_\_\_\_, solemnly declare that to the best of my knowledge:

- a) this bid has been prepared and filed without collusion, communication, understanding or arrangement with any other person in contravention of any law aimed at combating bid rigging;
- b) neither I nor any of the collaborators, representatives or employees of the tenderer have engaged in any communication of influence for the purposes of obtaining the contract, or, if such communication of influence has taken place, I declare that this communication has been the subject of an entry in the register of Lobbyists, as required by law if applicable;
- c) neither I nor any of the collaborators, representatives or employees of the tenderer have engaged in any acts of intimidation, influence peddling or corruption, against a member of the board, an official or employee or any other person working for the Municipality within the framework of this bid solicitation.

**AND I HAVE SIGNED:**

\_\_\_\_\_

Solemnly affirmed before me at \_\_\_\_\_

This \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2021

\_\_\_\_\_

Commissioner of Oaths for Quebec

### ANNEX 3

#### STATEMENT BY THE MEMBER OF A SELECTION COMMITTEE

I, the undersigned, member of the selection committee in relation to \_\_\_\_\_ (identify the contract), solemnly declare that I have no particular pecuniary interest, direct or indirect, with respect to this contract.

I undertake not to disclose the mandate entrusted to me by the municipality, as well as not to use, communicate, attempt to use or communicate, both during my mandate and after it, information obtained in the exercise or on the occasion of the exercise of my functions as a member of the selection committee.

**AND I HAVE SIGNED :**

\_\_\_\_\_

Solemnly affirmed before me at \_\_\_\_\_

This \_\_\_\_\_<sup>th</sup> day of \_\_\_\_\_ 2021

\_\_\_\_\_  
Commissioner of Oaths for Quebec