

**BY-LAW NO. 1458 ON CONTRACT MANAGEMENT**

ADOPTION PROCEDURE SUMMARY	
<b>NOTICE OF MOTION AND FILING:</b>	<b>AUGUST 19, 2019</b>
<b>ADOPTION DU BY-LAW:</b>	<b>AUGUST 28, 2019</b>
<b>COMING INTO EFFECT:</b>	<b>SEPTEMBER 4, 2019</b>

**CONSIDERING** section 573.3.1.2 of the Cities and Towns (C.Q.L.R., chapter C-19);

**CONSIDERING** notice of motion was given on August 19, 2019, and the draft by-law was filed at the same council meeting;

**ON AUGUST 28, 2019, COUNCIL ENACTED THE FOLLOWING:**

***Division I: General Provisions***

1. **Purpose** – Town of Mount Royal hereby establishes rules pertaining to contract management with a view to favouring transparency, fairness, integrity and sound contract management in the best interests of the community.

The By-law also promotes competition in order to obtain the best possible prices, while also taking into consideration the quality of the goods and services offered, delivery deadlines and supplier reliability.

2. **Scope** – Subject to the provisions of the *Cities and Towns Act*, this By-law applies to all contracts entered into by the Town as part of a contract awarding process. The By-law is binding on the municipal administration and its mandataries and all bidders and parties contracting with the Town.

3. **Objectives** – Pursuant to the provisions of the *Cities and Towns Act*, the Town hereby implements various measures to achieve the following:

- i) ensure compliance with the applicable anti-bid-rigging laws and regulations;
- ii) ensure compliance with the *Lobbying Transparency and Ethics Act* (C.Q.L.R., c. T-11.011) and the *Code of Conduct for Lobbyists* adopted under that Act;
- iii) prevent intimidation, influence-peddling and corruption;
- iv) prevent conflict-of-interest situations;
- v) prevent any other situation likely to compromise the impartiality or objectivity of the call-for-tenders process or the management of the resulting contract;
- vi) govern the making of decisions authorizing the amendment of a contract;
- vii) promote rotation among prospective contracting parties for contracts that may be made by agreement under the rules adopted under the fourth paragraph and that involve an expenditure of at least \$25,000 but below the expenditure threshold for a contract that may be awarded only after a public call for tenders under section 573.

4. **Definitions** – In applying this By-law:

“administration” means an elected official, officer or employee of the Town;

“bidder” means an executive officer, director, shareholder or employee of an enterprise or any other mandatary of the enterprise who takes part in a call-for-tenders process.

## ***Division II: Obligations of the Administration and Its Mandataries***

### *Subdivision I: Provisions Applicable to the Administration and Its Mandataries*

5. **Ethics** – The administration and its mandataries make an undertaking to bidders and contracting parties to:
  - i) treat all participants fairly;
  - ii) ensure that the contracting process is transparent;
  - iii) avoid all conflicts of interest and other situations that could entail personal advantage or gain;
  - iv) refrain at all times from using their position to favour the awarding of a contract to a particular bidder;
  - v) conduct themselves with integrity and honesty;
  - vi) apply this By-law in the best interests of the Town.
  
6. **Confidentiality** – In all call-for-tenders or contract-awarding processes, the administration and its mandataries shall conduct themselves with absolute discretion and maintain the confidentiality of the information disclosed to them regarding the process. Specifically, they shall at all times refrain from disclosing information that reveals the number and identity of the persons who have submitted a bid or requested a copy of the invitation to tender, a document to which it refers or an additional document related thereto, until the opening of the tenders.
  
7. **Site visits and information sessions** – Organizing site visits or information sessions involving several bidders is forbidden. Should either be necessary, the person in charge shall arrange for individual visits or sessions with each bidder. Such visits or sessions shall be arranged on an appointment basis and a schedule shall be established to ensure that bidders do not meet one another.

All questions asked by a bidder during a visit or session shall be noted. Any questions and answers thereto that generate amendments to the specification requirements shall be provided to all bidders.
  
8. **Declaration** – When an officer or employee becomes aware that he or she has a relationship that may be perceived as conflicting with the interests of a prospective bidder in a call-for-tenders or contract-awarding process in which that officer or employee is involved, he or she shall immediately inform the Town Manager.
  
9. **Gifts and other benefits** – The administration and its mandataries shall refuse all gifts and other benefits offered by an enterprise or a supplier or by their representatives in connection with a call-for-tenders or contract-awarding process.

### *Subdivision II: Provisions Applicable to the Selection Committee*

10. **Selection committee declaration** – The members of the selection committee shall declare, in writing, that no bidder or contracting party has attempted to communicate with them with a view to influencing them in their consideration, appreciation or recommendation respecting the awarding of the contract that was the subject of the call-for-tenders process.

11. **Member's declaration** – A member of a selection committee or the secretary shall immediately notify the Town Manager if he or she has a relationship that may be perceived as conflicting with the interests of one or more bidders, regardless of whether that relationship is familial, financial or of some other nature.

### ***Division III: Obligations of Bidders and Contracting Parties***

12. **Declaration** - During a call-for-tenders process, a bidder shall complete and sign the declaration that forms an integral part of the tendering documents and attached to this By-law, ensuring the veracity of the contents thereof to the best of his knowledge.
13. **Bidder's undertaking** – During the call-for-tenders process, a bidder or contracting party shall undertake that it and its subcontractors will not use the services of any person who took part in developing the call for tenders in response to which it submitted a tender or in preparing the contract that was awarded.
14. **Gifts and other benefits** – The bidder or contracting party is prohibited from offering a gift or other benefit to a member of the administration or to any of its mandataries in a call-for-tenders or contract-awarding process.
15. **Lobbying activities declaration** – A bidder, its mandatary or a contracting party shall declare that, if any communications aimed at influencing the awarding of a contract took place, they were in compliance with the Lobbying Transparency and Ethics Act (C.Q.L.R., c. T 11.011), the Code of Conduct for Lobbyists and notices issued by the Lobbyist Commissioner.

### ***Division IV: Contracts***

#### ***Subdivision I: Provisions Applicable to All Contracts***

16. **Contract management** – An amendment to a contract is permissible if it is ancillary to the contract, does not change the nature thereof and is not an element that should have been included in the initial contract.

However, an amendment resulting in an additional expenditure must be justified by the person in charge of the contract or the person who can approve the expenditure and it must be authorized in accordance with the applicable rules.

No project, requirement or order may be split up or apportioned in order to discriminate in favour of a contracting party, be exempted from a control procedure or avoid an obligation stipulated in this By-law.

#### ***Subdivision II: Special Provisions Applicable to Contracts for More than \$25,000***

17. **Call for tenders** – For a contract-awarding process involving an amount greater than \$25,000 but less than \$100,000, the tendering documents shall be provided by the person designated by the administration.

For any contract-awarding process involving an amount greater than \$100,000, the tendering documents shall be provided through the Système électronique d'appel d'offres (SEAO).

18. **Documents** – The tendering documents shall be prepared with due regard for fairness, objectiveness and clarity. All available information regarding a call for tenders shall be impartially and uniformly made available to all prospective bidders.
19. **Professional Services Contracts** – The Town may grant any professional services contract with an expenditure of at least \$25,000 but less than \$50,000 by mutual agreement.

20. **Measures to ensure a rotation among potential contracting parties** - When awarding a contract by mutual agreement under section 19, the Town should strive to have the participation of the greatest possible number of companies among those who can meet its requirements and to encourage the rotation among contracting parties whenever possible.

However, the rotation must not compromise the sound management of public expenditures.

***Division V: Administrative Provisions***

21. **Town Manager** – The Town Manager is responsible for overseeing the application of this By-law and compliance herewith.

He or she shall inform every person in the administration who performs one or more tasks related to the awarding or management of municipal contracts of the rules established hereby

22. **Whistle-blowing** – Every member of the administration has the duty to report to the Town Manager any situation, conduct or action that could compromise the integrity of the contract-awarding process.

23. **Sanctions against the mandatary** – Besides imposing any penalty that may be stipulated in the contract binding the mandatary to the Town, the Town may unilaterally terminate the contract of a mandatary who violates this By-law.

In addition, the mandatary may no longer be invited to tender on a Town project or contract for a maximum period of three (3) years.

24. **Sanctions against the bidder** – A bidder who, directly or indirectly, violates any of its obligations imposed under this By-law may have its tender automatically rejected if justified by the seriousness of the violation.

In addition, the bidder may no longer be invited to tender on a Town project or contract for a maximum period of three (3) years.

25. This by-law shall come into effect according to the Law.

Philippe Roy  
Mayor

Alexandre Verdy  
Town Clerk

**By-law No 1458**

**Schedule A**

Bidder's declaration

**BIDDER'S DECLARATION**

**PROJECT:** \_\_\_\_\_ **NUMBER:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_

I, \_\_\_\_\_, the duly authorized signatory for the bid submitted  
(Name and title of the person authorized by the Bidder)

pursuant to this Call for Tenders on behalf of \_\_\_\_\_,  
(Name of the Bidder firm)

hereinafter referred to as the "Bidder",

**HEREBY DECLARE that, to the best of my knowledge, neither I, nor the Bidder or one of its employees, administrators or shareholders: (tick off the applicable boxes)**

- have a familial, financial or other relationship that could create a perceived conflict of interest, directly or indirectly, with one or more members of the municipal administration.

Otherwise, the Bidder declares the following relationships:

Specify: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

- have influenced or otherwise taken part in the preparation of the Call for Tenders Documents;
- have, during the call-for-tenders process, attempted to communicate with any members of the administration involved in the process, including any members of a selection committee, with a view to influencing them in their consideration, appreciation or recommendation respecting the awarding of the contract that is the subject of the process;
- have infringed any requirement stipulated in the *Cities and Towns Act* and the *Town's Contract Management Policy*;
- have established this tender with collusion and that there has been no communication, agreement or arrangement with a competitor regarding the prices, methods, factors or formulas used to determine prices, regarding whether to submit a bid or regarding the submission of a bid that does not meet the specifications of the Call for Tenders;
- have been found guilty of violating an anti-bid-rigging law or regulation in the three (3) years preceding the Call for Tenders;
- have done any communication in contravention of the *Lobbying Transparency and Ethics Act* (C.Q.L.R., c. T-11.011), the *Code of Conduct for Lobbyist* and with the notices issued by the Lobbyist Commissioner;

I acknowledge the following:

that I have read and understood the contents of this Declaration;

that the enclosed Bid will be disqualified if this Declaration is found to be untrue or incomplete;

that if the administration discovers that, in preparing the Bid and notwithstanding this Declaration, there was collusion or, as the case may be, that the Bidder has been convicted under the federal *Competition Act*, the contract that may have been awarded to the Bidder in ignorance of that fact shall be terminated and proceedings in damages may be instituted against the Bidder and any person who participated in the collusion;

Signed,

\_\_\_\_\_  
 (Signature)

\_\_\_\_\_  
 (Date)