

**QUEBEC
TOWN OF BARKMERE
MRC DES LAURENTIDES**

BY-LAW NUMBER 265 ON CONTRACTUAL MANAGEMENT

WHEREAS a Contract Management Policy was adopted by the Town of Barkmere on December 10, 2010, in accordance with section 573.3.1.2 of the Cities and Towns Act (hereinafter referred to as the “LCV”);

WHEREAS article 573.3.1.2 L.C.V. was replaced, on January 1, 2018, obliging municipalities, as of this last date, to adopt a by-law on contract management, the current policy of the Town being however deemed to be such a by-law;

WHEREAS the Town wishes, as permitted by the 4th paragraph of section 573.3.1.2 CTA, to provide rules for the awarding of contracts that involve an expenditure of at least \$25,000, but less than the expenditure threshold of a contract that can only be awarded after a public call for tenders under section 573 LCV;

WHEREAS consequently, article 573.1 L.C.V. (invitation to tender) no longer applies to these contracts as of the entry into force of this Regulation;

WHEREAS this by-law meets an 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 January 15, 2022;

WHEREAS the Director General and Secretary-Treasurer mentions that the purpose of this by-law is to provide measures relating to contract management for any contract that will be entered into by the Town, including certain rules for awarding contracts for contracts that involve an expense of at least \$25,000, but less than the expenditure threshold of a contract that can only be awarded after a public call for tenders under section 573 CTA, this threshold being, since August 13, 2020 , of \$105,700, and may be modified following the adoption, by the Minister, of a regulation to this effect;

CONSEQUENTLY, the municipal council decrees the following:

**IT IS PROPOSED BY Councillor Stephen Lloyd ,
SECONDED BY Councillor Kenneth Mann,
AND UNANIMOUSLY RESOLVED:**

TO ADOPT THE FOLLOWING BY-LAW:

BY-LAW 265- CONTRACTUAL MANAGEMENT

CHAPTER I

DECLARATORY AND INTERPRETATIVE PROVISIONS

DIVISION I

DECLARATORY PROVISIONS

1. Purpose of the rules

The purpose of these rules is:

a) to provide measures for the awarding and management of contracts awarded by the Town, in accordance with Article 573.3.1.2. L.C.V.;

(b) to provide rules for the awarding of contracts involving an expenditure of at least \$25,000, but below the expenditure threshold for a contract which may only be awarded after a public call for tenders under the article 573 LCV.

2. Scope

This by-law applies to any contract entered into by the Town, including a contract that is not referred to in any of the subparagraphs of the first paragraph of subsection 1 of article 573, or in articles 573.3.0.1 and 573.3. 0.2 LCV

This by-law applies regardless of the authority awarding the contract, whether council or any person to whom council has delegated the authority to spend and contract on behalf of the Town.

DIVISION II

INTERPRETATIVE PROVISIONS

3. Interpretation of the text

This Regulation must be interpreted according to the principles of the Interpretation Act (CQLR, vs. I-16).

It should not be interpreted as allowing derogation from the mandatory provisions of the laws governing the contracts of municipalities, unless these laws expressly allow derogation from them by this regulation, including, for example, some of the measures provided for in Chapter II of this regulation.

4. Other bodies or organizations

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

5. Special Rules of Interpretation

These rules shall not be interpreted:

- (a) restrictively or literally;
- (b) as restricting the possibility for the Town to contract by mutual agreement, in cases where the law allows it to do so.

The measures provided for in this Regulation must be interpreted:

- a) according to the principles set out in the preamble of the Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers as such (2017, c. 13) (Bill 122) recognizing in particular the municipalities as being local governments and to elected officials, the necessary legitimacy to govern according to their attributions;.
- b) in such a way 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 made, with regard to the costs, the time required and the size of the Town.

6. Terminology

Unless the context indicates otherwise, the words and expressions used in these rules have the following meaning:

“Call for tenders”: Public call for tenders or by invitation required by articles 573 and following L.C.V. or a regulation adopted under this law. Are excluded from the expression "call for tenders", requests for prices which are formulated when no call for tenders is required by law or by these regulations.

“Bidder”: Any person who submits a bid during a tendering process.

CHAPTER II

CONTRACTING RULES AND ROTATION

7. General

The Town respects the rules for awarding contracts provided for in the laws that govern it, including the L.C.V. More specifically:

- (a) it proceeds by call for tenders through invitation where the law or a regulation adopted under a law requires such a call for tenders, unless a specific provision to the contrary is 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 a regulation adopted under the law;
- c) it may proceed by mutual agreement in cases where the law or this Regulation allows it to do so.

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

8. Contracts that may be made by agreement

Subject to section 11, any contract referred to in one of the subparagraphs of the first paragraph of section 573 CTA, involving an expenditure of at least \$25,000, but less than the expenditure threshold of a contract which can only be awarded after a public call for tenders under article 573 LCV, can be concluded by mutual agreement by the Town.

9. Rotation - Principles

The Town promotes, if possible, rotation among potential suppliers with respect to contracts that may be awarded by mutual agreement under Article 8. The Town, in making its decision in this regard, considers in particular the following principles:

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

10. Rotation – Measurements

For the purpose of ensuring the implementation of the rotation provided for in article 9, the Town applies, as much as possible and unless there are special circumstances, the following measures:

- a) potential suppliers are identified before awarding the contract. If the territory of the Town has more than one supplier, this identification may be limited to the latter territory or, where applicable, the territory of the MRC or any other geographical region that will be deemed relevant given the nature of the contract;
- b) once the suppliers have been identified and considering the principles listed in section 9, rotation between them must be encouraged, unless there are reasons related to sound administration;
- c) the Town may proceed with a call for interest in order to find out which suppliers are likely to meet its needs;

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

e) for the categories of contracts it determines, for the purpose of identifying potential suppliers, the Town may also draw up a list of suppliers. Rotation between the suppliers appearing on this list, if applicable, must be favoured, subject to what is provided for in paragraph b) of this article.

f) Without limiting the principles and measures set out with regard to the rotation of suppliers provided for in this Bylaw, in the context of the awarding of any contract which involves an expenditure below the decreed expenditure threshold of a contract which cannot be awarded that after a request for public tender, the municipality must favor Quebec goods and services as well as suppliers, insurers and contractors who have an establishment in the Province of Quebec.

An establishment in the Province of Québec, within the meaning of this article, is any place where a supplier, insurer or contractor carries on its activities on a permanent basis that is clearly identified with its name and accessible during normal business hours.

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

The Municipality, in making a decision on the awarding of a contract referred to in this article, considers in particular the principles and measures set out in terms of rotation of co-contractors and more specifically detailed in this article, subject to the necessary adaptations to local purchase.

This Section 10 f) remains in effect until June 25th, 2024.

CHAPTER III

MEASURES

DIVISION I

MUTUAL AGREEMENT CONTRACTS

11. General

For certain contracts, the Town is not subject to any specific competitive bidding procedure (public call for tenders or by invitation). This by-law cannot have the effect of restricting the possibility, for the Town, of proceeding by mutual agreement for these contracts. These include, in particular, contracts:

- which, by their nature, are not subject to any call for tender's process (contracts other than insurance contracts for the performance of work, supplies and services);
- expressly exempted from the call for tender's process (in particular those listed in article 573.3 LCV) and contracts for professional services necessary in the context of an action before

- a court, an organization or a person exercising judicial functions or jurisdictional;
- insurance, for the performance of work, supplies or services (including professional services) involving an expense of less than \$25,000.

12. Measurements

When the Town 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 16 (Duty to inform elected officials and employees) and 17 (Training);

b) Intimidation, exerting influence or corruption

- Measure provided for in Article 19 (Whistleblowing);

c) Conflict of interest

- Measure provided for in Article 21 (Whistleblowing);

d) Modification of a contract

- Measure provided for in Article 27 (Modification of a contract).

13. Information document

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

DIVISION II

BID-RIGGING

14. Penalty if collusion

Must be included in the tender documents, a provision providing for the possibility for the Town 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.

15. Declaration

Any tenderer must attach to his tender, or at the latest before the contract is awarded, a declaration solemnly affirming that his tender has been prepared and submitted without there being 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 as Annex 2.

DIVISION III

LOBBYISM

16. Duty to inform elected officials and employees

Any member of council or any officer or employee must remind any person 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 believes there is a violation of this law.

17. Training

The Town favors the participation of members of council and civil servants and employees in training intended to inform them of the legislative and regulatory provisions applicable to lobbying.

18. Declaration

All tenderers must attach to their tender or, at the latest before the awarding of the contract, a declaration solemnly affirming that neither they nor any of their collaborators, representatives or employees have engaged in a 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 entered in the registry of lobbyists when such registration is required by law. This declaration must be made on the form attached as Annex 2.

DIVISION IV

INTIMIDATION, INFLUENCE PEDDLING OR CORRUPTION

19. Denunciation

Any member of council, any officer or employee, as well as any other person working for the Town must denounce, as soon as possible, any attempt at intimidation, influence peddling or corruption which he has witnessed within the framework of his functions. This measure should not be interpreted as limiting the right of the data subject to lodge a complaint with a police force or other public authority.

A member of the council makes this denunciation to the director general; the Director General to the Mayor; other civil servants and employees as well as any person working for the Town, to the director general. When the denunciation directly or indirectly involves the mayor or the director general, the denunciation is made to the person who is not involved. If they are both implicated, the denunciation is made to the deputy mayor or another uninvolved member of the municipal council. The person who receives the report must deal with it diligently and take the appropriate measures depending on the nature of the situation reported.

20. Declaration

Any tenderer must attach to his tender, or at the latest before the awarding of the contract, a declaration solemnly affirming that neither he nor any of his collaborators, representatives or employees has delivered, within the framework of the call for offers, acts of intimidation, influence peddling or corruption, towards a member of council, an official or employee or any other person working for the Town. This declaration must be made on the form attached as Annex 2.

DIVISION V

CONFLICTS OF INTEREST

21. Denunciation

Any member of council, any officer or employee, as well as any other person working for the Town, 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, partnership or enterprise likely to enter into a contract with the Town.

A member of the council makes this denunciation to the director general; the Director General to the Mayor; other civil servants and employees as well as any other person working for the Town, to the director general. When the denunciation directly or indirectly involves the mayor or the director general, the denunciation is made to the person who is not involved. If they are both implicated, the denunciation is made to the deputy mayor or another uninvolved member of the municipal council. The person who receives the report must deal with it diligently and take the appropriate measures depending on the nature of the situation reported.

22. Declaration

When the Town uses a bid weighting and evaluation system, any member of the selection committee must solemnly declare in writing, before beginning the evaluation of the bids, that he has no particular, direct or indirect pecuniary interest in respect to the contract being evaluated. He must also undertake not to disclose the mandate entrusted to him by the Town, as well as not to use, communicate, attempt to use or communicate, both during his mandate and after it, information obtained in the exercise or on the occasion of the exercise of 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

Minimal pecuniary interest is not covered by the measures described in Articles 21 and 22.

DIVISION VI

IMPARTIALITY AND OBJECTIVITY OF THE CALL FOR TENDERS PROCESS

24. Tender Authority

Every call for tenders identifies a person in charge and provides that any potential tenderer or any tenderer must contact this person alone to obtain any information or clarification relating to the call for tenders.

25. Questions from Bidders

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

The call for tenders officer has full discretion in judging the relevance of the questions asked and those

that require an answer and may group and rephrase certain questions for the purpose of transmitting the answers to the tenderers.

26. Denunciation

Any member of council, any officer or employee, as well as any other person working for the town, 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 bidding process and the resulting contract management.

A council member makes this denunciation to the general manager; the Director General to the Mayor; other municipal officials and employees, as well as any other person working for the Town, to the Director General. When the denunciation directly or indirectly involves the mayor or the Director General, the denunciation is made to the person who is not involved. If they are both implicated, the denunciation is made to the acting mayor or another uninvolved member of the municipal council. The person who receives the report must deal with it diligently and take the appropriate measures depending on the nature of the situation reported.

DIVISION VII

MODIFICATION OF A CONTRACT

27. Modification of a contract

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

The Town 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. Site meetings

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

CHAPTER IV

ADMINISTRATIVE AND FINAL PROVISIONS

29. Application of the by-law

The application of this by-law is under the responsibility of the Director General. The latter is responsible for preparing the report that must be submitted annually to the council concerning the application of this by-law, in accordance with 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 the Board on December 12th, 2010 and deemed, since January 1st, 2018, a by-law on contract management under section 278

of the Act, intended primarily to recognize that municipalities are local governments and as such increase their autonomy and powers (2017, c.13).

31. Entry into force and publication

This by-law comes into force in accordance with the law and is published on the Town's website. In addition, a copy of these rules is sent to Minister of Municipal Affairs, Regions and Land Occupancy.

Adopted in Barkmere, this March 12, 2022.

(Original signed)

Luc Trépanier, Mayor

(Original signed)

Martin Paul Gélinas, secretary-treasurer

Procedure for entry into force	
Notice of motion and presentation	January 15 th , 2022
Adoption of the by-law	March 12 th 2022
Public notice of promulgation	March 14 th 2022
Transfer to MMAH	March 21 st 2022

Certified Copy
This March 21st 2022

Martin Paul Gélinas, secretary-treasurer