

**TOWN OF HAMPSTEAD
PROVINCE OF QUEBEC**

BY-LAW NUMBER 1020

**BY-LAW CONCERNING CONTRACT
MANAGEMENT**

WHEREAS a Notice of Motion of the present Draft By-law was given at the Council Meeting held on July 3rd, 2018;

WHEREAS a Draft By-law was adopted at the Council meeting held on July 3rd, 2018;

WHEREAS all members of the Council have received a copy of Draft By-law no. 1020 and declare having read it;

ON AUGUST 6th, 2018, THE COUNCIL DECREES AS FOLLOWS:

WHEREAS this By-Law is adopted in accordance with Article 573.3.1.2 of the Cities and Towns Act (R.S.Q., c. C-19) and Article 938.1.2 of the Municipal Code of Quebec (R.S.Q., c. C-27.1);

WHEREAS this By-Law must provide for at least seven (7) types of measures, as follows:

- Measures to promote compliance with any applicable anti-bid-rigging legislation;
- Measures to ensure compliance with the Lobbying Transparency and Ethics Act (R.S.Q., c. T-11.011) and the Code of Conduct for Lobbyists (R.S.Q., c. T-11-011, r. 2);
- Measures to prevent intimidation, influence peddling or corruption;
- Measures aimed at preventing conflict of interest situations;
- Measures to prevent any other situation likely to compromise the impartiality and objectivity of the call for tenders process and the management of the resulting contract;
- Measures to govern the making of decisions authorizing the modification of a contract;
- Measures to ensure a fair rotation of potential contracting parties for contracts involving an expenditure of less than the threshold obliging the public call for tenders and that can be entered into by mutual agreement;

WHEREAS this By-Law may also prescribe the rules for the awarding of contracts for expenses of at least \$25,000 and less than the threshold obliging the public call for tenders that may vary depending on specific contract categories;

THAT it be enacted and ordained as By-Law 1020, entitled “By-law Concerning Contract Management”, as follows:

1. Preamble

The preamble forms an integral part of this By-Law.

2. Definitions

In this By-Law, the following terms mean:

“Simplified public tender”: tender for which the documents are provided by the Town through the Système électronique d’appel d’offres (SEAO), without having to be published in a newspaper and for which the bidding period is at least eight (8) calendar days;

“Contract by mutual agreement”: any contract that is awarded following a negotiation between the parties without a call for tender process;

“Bidder”: employee, executive officer, director or shareholder of a company as well as any other mandatary of that company who participates in a call for tenders process;

“Town”: the Town of Hampstead.

3. Application

3.1. Types of contracts covered

This By-Law applies to any contract awarded by the Town.

However, unless otherwise provided in the Law or in this By-Law, it does not apply to contracts that provide (in whole or in part) revenues to the Town.

3.2. Person responsible for applying this By-Law

The Director-General is responsible for ensuring that this By-Law is applied.

4. Measures to ensure compliance with any applicable anti-bid-rigging legislation

4.1. Mandatory reporting of any situation of collusion, bid-rigging, influence peddling, intimidation or corruption

Any member of council, employee or administrator who is made aware of a situation of collusion, bid-rigging, influence peddling, intimidation or corruption or who witnesses such a situation must report it to the Director-General, or, if said situation involves that person, to the Town Clerk.

4.2. Confidentiality and discretion

The members of council, employees and administrators must, as part of any call for tenders process or contract-awarding process, even prior or after the said processes, exercise discretion and treat with confidentiality all the information which has come to their knowledge about such a process.

They must refrain at all times from disclosing the names of potential or current Bidders until the bids are opened. In particular, the members of the council must not intervene at any moment on the process of call for tender enacted by the present by-law.

4.3 Obligation of confidentiality of the mandataries and consultants responsible for drafting documents or assisting the Town in the call for tenders process

Where applicable, any mandataries or consultants assigned by the Town to draft the tender documents or to assist the Town in that process must maintain the confidentiality of their mandate and of all the information brought to their attention within their mandate, even prior and after the said process.

5. Measures to ensure compliance with the *Lobbying Transparency and Ethics Act* and the *Code of Conduct for Lobbyists*

5.1. Retention of information about any communication of influence

The members of council, employees and administrators should, if applicable, keep any documents either in electronic or printed form such as agendas, emails, telephone reports, letters, minutes of meetings, supporting documents, offers of services, faxes, etc., related to any communication with them by any individual, whether or not it was made in conformity with The *Lobbying Transparency and Ethics Act*, the *Code of Conduct for Lobbyists*, or the notices from the Lobbyists Commissioner.

5.2. Declaration related to lobbying activities towards the Town

The Bidder must present with its bid to the Town an official declaration (Annex II) attesting whether activities of lobbying have been engaged to obtain the contract he is bidding for and whether these activities were in conformity with The *Lobbying Transparency and Ethics Act* (R.S.Q., c. T-11.011), the *Code of Conduct for Lobbyists*, and the notices from the Lobbyists Commissioner.

6. Measures to prevent intimidation, influence peddling and corruption

6.1. Declaration of no collusion and no attempt to influence members of the Administration

The Bidder must submit with his bid to the Town an official declaration (Annex I) attesting that he did not attempt to contact or did not contact any member of the members of council, employees or administrators in order to influence or obtain information concerning the call for tenders.

The Bidder must also declare that his tender was prepared without there being any collusion, communication, agreement or arrangement with a competing Bidder.

He must also declare that there was no agreement or arrangement with a competitor about prices, methods, factors or formulas to fix prices, or on a decision whether or not to submit a bid that does not meet the tender's specifications, directly or indirectly, and prior to the earliest of the following dates: official date of the opening of tenders or of the contract award date.

6.2. Benefits to an employee, administrator, member of the council or of the selection committee

A Bidder or supplier is strictly prohibited from offering a donation, payment, gift, compensation or any other benefit to an employee, administrator, member of the council or of the selection committee

7. Measures aimed at preventing conflict of interest situations

7.1. Declaration of interests of the employees and members of the Administration

In the days following the opening of tenders or the awarding of a contract, the members of the Administration involved in the call for tenders process or its preparation, or in the awarding of the contract, must fill out and submit an official declaration (Annex II) to identify any familial or financial link and pecuniary interests, if any, that they have with the Bidders who submitted a bid for a contract which they had to prepare or handle.

7.2. Declaration of interests of the Bidder

The Bidder must submit with his bid an official declaration (Annex I) indicating whether he has, personally or through his administrators, shareholders or executive officers, any familial, financial or other links which may give rise to a conflict of interests, either directly or indirectly, with employees, members of the council and of the Administration.

He must also specify that he and his subcontractors will not retain the services of anyone involved in preparing the call for tenders for which he is bidding or in

preparing the contract awarded to him, for a period of one (1) year following the end of the awarded contract.

7.3. Consequences of the existence of a link

A link between a Bidder and an employee, a member of the council or of the Administration does not necessarily result in the rejection of the bid. However, the Town reserves the right to take any measure permitted by law if it considers the conflict of interests to be important enough to award the contract to another Bidder.

8. Measures to prevent any other situation likely to compromise the impartiality or objectivity of the call for tenders and the management of the resulting contract

8.1. Loyalty

A member of the council, employee or administrator must at all times avoid using his position to favour the awarding of a contract to a particular Bidder.

8.2 Selection of invited bidder

The Town Council delegates to the Director of Material Resources the authority to select invited bidders in an invitation to tender or a mutual agreement contract.

8.3 Delegation of authority to appoint members of the selection committee to analyze the tenders

In order to keep the identity of the selection committee members confidential, the Town Council delegates to the Director-General the authority to appoint all members of the selection committee designated to analyze the bids in the tendering process using criteria not related to the price, in conformity with the process prescribed by Law. No member of the Town Council, a business associate or immediate family member may, at any time, be part of any selection committee in order to preserve the most complete appearance of impartiality of the recommendations of the committees established for the purposes of this by-law

8.4 .Appointment of a Secretary

To assist and guide, whenever necessary, the members of the selection committee responsible to analyze certain bids, the Director of Material Resources is appointed as Secretary of the selection committee, the Town Clerk is appointed as substitute secretary.

8.5 Official declaration of Committee members and secretary

Before taking office, the members and the secretary of the selection committee shall fill out and submit an official declaration (Annex III). This declaration states that the members of the committee will analyze the bids submitted ethically and without partiality, favour or consideration, and that they will assess individually the quality of each of the conforming bids submitted before they are reviewed at the selection committee.

The members of the committee and the secretary of the committee shall also solemnly declare that they will under no circumstances disclose the mandate entrusted to them by the Town, that they will keep their deliberations confidential, take all appropriate precautions to avoid placing themselves in a conflict of interests and to avoid having any direct or indirect interests in the call for tenders. Failing that, they formally undertake to report their interest and resign from their mandate.

9 Measures to govern the making of decisions authorizing the modification of a contract

9.1 Procedures for requiring a modification

For any request to modify a contract, the person responsible for the project shall present a written request indicating the reasons for the modification and submit it to the approval

of the director of the department concerned and the Director General. They must produce a recommendation to the municipal council, as the case may be.

9.2 Procedures for authorizing a modification

9.2.1 Delegated Authority: the director of the concerned department will ensure that the proper authorization for the expenditure, according to the Town's *By-law concerning the delegation of authority to the officers and employees* has been obtained.

Council Adoption: if the expenditure exceeds the delegated authority limit, it must be authorized by a resolution of the council unless the amount of the change order is lower than the amount of the contingency related to the contract and that contingency has been approved by the Council when awarding the contract.

10 Rules for awarding contracts involving an expenditure between \$25,000 and the threshold obliging the public call for tenders

Any contract involving an expenditure between \$25,000 and the threshold obliging the public call for tenders can be entered into via one of the following means:

- 10.1 Simplified public call for tenders;
- 10.2 Call for tenders by invitation;
- 10.3 Contract by mutual agreement

In the case of a contract by mutual agreement, the measures provided for in articles 11 and 12 of this By-Law must be observed.

11 Measures to ensure a rotation among potential contracting parties

11.1 Participation of different contracting parties

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.

11.2 Invitation to several companies when awarding contracts by mutual agreement

When awarding contracts by mutual agreement, the Town should strive to invite and negotiate with at least two companies whenever possible.

12 Rules for awarding contracts by mutual agreement

12.1 Decision to award a contract by mutual agreement

For any contract involving an expenditure between \$25,000 and the threshold obliging the public call for tenders, the Purchasing Department shall perform an in-depth, well-documented analysis, keeping the best interests of the Town in mind in a global perspective, while taking into account the very specific criteria set out below as a guideline, to decide which type of solicitation and awarding is the most appropriate among a simplified public call for tenders, a call for tenders by invitation, or a contract by mutual agreement.

Below, some of the criteria to take into account when making a decision to award a contract by mutual agreement:

- (a) The nature of the contract: contracts for which the Town believes, given the object of the contract that a public call for tenders would not be in the public interest, such as a contract for legal services, for financial or banking services, for services relating to an advertising campaign, for the purchase of IT products, etc.;
- (b) The overall expenditure, taking into consideration different factors such as the guarantees provided, the quality and availability of products, the expertise of professionals, the training costs, etc.;
- (c) The number of suppliers likely to meet the requirements of the Town;
- (d) The costs and time frame associated with the process;

- (e) The goals, other than those related to price, such as promoting local economy, sustainable development or social economy enterprises;
- (f) The continuity of services or supplies for certain products;
- (g) The level of in-house expertise in the area covered by the contract.

12.2 Obligation to document

For any contract awarded by mutual agreement, the Director of Material Resources must complete the « Formulaire d'analyse pour le choix d'un mode de passation » for this purpose (ANNEX IV) or any modification thereof. If the choice is made following a recommendation by the person in charge of the file, the person in charge of the file will have to justify this recommendation in writing and the written document will be an integral part of Annex IV.

12.3 Accountability to Council

Whenever possible, the Town Council shall be informed in advance in regards to any upcoming decision to award a contract by mutual agreement. If the timeframe does not allow it, the Town Council will be informed accordingly at the next meeting.

13 Sanctions

13.1 Sanctions for suppliers, contractors, mandataries or consultants

A supplier, contractor, mandatary or consultant who violates the present By-Law or the provisions of a declaration signed by him pursuant to the By-Law may, in addition to penalties, see his contract unilaterally terminated and see his name removed from the list of suppliers compiled by the Town for the purpose of awarding contracts by mutual agreement or on invitation, possibly for a period of five (5) years.

13.2 Sanctions for Bidders

A Bidder who, directly or indirectly, violates any of the obligations imposed by the present By-Law or the provisions of a declaration he signed pursuant to the By-Law may have its bid rejected if the violation so warrants, see its contract already awarded unilaterally terminated and see its name removed from the list of suppliers compiled by the Town for the purpose of awarding contracts by mutual agreement or on invitation, possibly for a period of five (5) years.

13.3 Penal sanctions

It is prohibited for any person to violate or allow anyone to violate a provision of this By-Law.

Any person who violates or allows anyone to violate Articles 4.1, 5.2, 6.1 or 7.2 of this By-Law commits an offence and is liable to a fine. If the offender is a private individual, the fine is \$1,000, and if the offender is a legal entity, the fine is \$2,000, without regard to any other measures that the Town Council might want to take.

In the case of a subsequent offence, the offender is liable to a fine, the amount of which being \$2,000 for a private individual, and \$4,000 for a legal entity.

In all instances, the costs are added to the fine.

Should an infraction continue, each day on which the offence is continued shall constitute a separate infraction and the fine enacted for this infraction may be imposed for each day that the infraction lasts.

14 Coming into effect

This By-law shall come into force according to the law.

(s) William Steinberg
Dr. William Steinberg, Mayor

(s) Pierre Tapp
Me Pierre Tapp, Town Clerk