
BY-LAW CONCERNING CONTRACT
MANAGEMENT

At a Regular Monthly Meeting of the Council of Côte Saint-Luc, held at City Hall, 5801 Cavendish Boulevard, on Monday, March 12, 2018 at 8:00 pm, and at which were present:

Mayor Mitchell Brownstein, B. Comm., B.C.L., L.L.B

Councillor Dida Berku, B.C.L.

Councillor Mike Cohen, B.A.

Councillor Steven Erdelyi, B.Sc., B.Ed.

Councillor Ruth Kovac, B.A.

Councillor Mitch Kujavsky, B. Comm.

Councillor Oren Sebag, B.Sc. RN MBA

Councillor David Tordjman, Eng.

Councillor Sidney Benizri

AND ALSO PRESENT:

Ms. Tanya Abramovitch, City Manager

Ms. Nadia Di Furia, Associate City Manager

M^e Jonathan Shecter, Associate City Manager and City Clerk

M^e Frédérique Bacal, Assistant City Clerk, acted as Secretary of the meeting

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 \$100,000 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 \$100,000 that may vary depending on specific contract categories;

THAT it be enacted and ordained as By-Law 2497, 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:

"Administration": City's elected official, officer or employee;

"Simplified public tender": tender for which the documents are provided by the City 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;

"City Manager": for the purpose of the present By-Law, references to the City Manager shall include the Associate City Manager(s).

"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;

"City": the City of Côte Saint-Luc.

3. Application

3.1. Types of contracts covered

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

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 City.

3.2. Person responsible for applying this By-Law

The City Manager 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 the Administration 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 City Manager, or, if said situation involves that person, to an Associate City Manager.

4.2. Confidentiality and discretion

The members of the Administration 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.

Particularly, they must refrain at all times from disclosing the names of potential or current Bidders until the bids are opened.

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

Where applicable, any mandataries or consultants assigned by the City to draft the tender documents or to assist the City 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 the Administration 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 City

The Bidder must present with its bid to the City an official declaration (Annex I) 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 City an official declaration (Annex I) attesting that he did not attempt to contact or did not contact any member of the Administration 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 a member of the Administration

A Bidder or supplier is strictly prohibited from offering a donation, payment, gift, compensation or any other benefit to a member of the Administration

7. Measures aimed at preventing conflict of interest situations

7.1. Declaration of interests of the 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 members 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 a member of the Administration does not necessarily result in the rejection of the bid. However, the City reserves the right to reject any bid 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 Administration must at all times avoid using his position to favour the awarding of a contract to a particular Bidder.

8.2. 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 City Council delegates to the General Counsel 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, as provided for in the *By-Law concerning the delegation of authority to the officers and employees of the City*.

8.3. Appointment of a Secretary

To assist and guide, whenever necessary, the members of the selection committee responsible to analyze certain bids, the Manager of Purchasing or the General Counsel is appointed as Secretary of the selection committee.

8.4. 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 City, 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 (change order), 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 City Manager, as provided in the City's Purchasing policies and in the Change order/contingency procedure.

9.2. Procedures for authorizing a modification

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

9.2.2. Council Adoption: if the expenditure exceeds the delegated authority limits, then it must be authorized by resolution by Council, unless the amount of the change order is within the contingency amount related to the contract and said contingency was approved by Council when awarding the contract.

10. Rules for awarding contracts involving an expenditure between \$25,000 and \$99,999

Any contract involving an expenditure between \$25,000 and \$99,000 can be entered into via one of the following means:

- 10.1.1. Simplified public call for tenders;
- 10.1.2. Call for tenders by invitation;
- 10.1.3. 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 City 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 City 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 \$99,999, the Purchasing Department shall perform an in-depth, well-documented analysis, keeping the best interests of the City 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 City 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 City;
- (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. Accountability to Council

Whenever possible, the City 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 City Council will be informed accordingly at the next meeting.

13. Sanctions

13.1. Sanctions for suppliers, contractors, mandataries or consultants

A supplier, contractor, mandatory 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 City 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 City for the purpose of awarding contracts by mutual agreement or on invitation, possibly for a period of five (5) years.

13.3. Criminal 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 City 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) Mitchell Brownstein

MITCHELL BROWNSTEIN
MAYOR

(s) Frédérique Bacal

FRÉDÉRIQUE BACAL
ASSISTANT CITY CLERK

CERTIFIED TRUE COPY



FRÉDÉRIQUE BACAL
ASSISTANT CITY CLERK

ANNEX I
Bidder's Declaration

I, the undersigned, in presenting the attached bid or offer (hereinafter, the "Bid") to:

(Name and title of recipient of the Bid)

for the call for tenders:

(Name and number of the call for tenders [hereinafter the "Call for Tenders"])

issued by the City of Côte Saint-Luc (hereinafter the "City")

declare the following and certify that these declarations are true and complete in every aspect.

I declare, on behalf of _____

(Name of Bidder [hereinafter, the "Bidder"])

that:

- 1) I have read and understood the contents of this declaration;
- 2) I know that the attached Bid can be disqualified if the statements contained in this declaration are not true or complete in every aspect;
- 3) I know that the contract, if awarded to me, can be terminated if the statements contained in this declaration are not true or complete in every aspect;
- 4) I am authorized by the Bidder to sign this declaration and to present, on his behalf, the accompanying Bid;
- 5) All the individuals whose names appear on the attached Bid have been authorized by the Bidder to establish the terms and conditions included in the Bid and to sign the Bid on his behalf;
- 6) For the purposes of this declaration and of the attached Bid, I understand that the word "competitor" means any organization or person, other than the present Bidder:
 - (a) who was invited to present a bid through the Call for Tenders;
 - (b) who could possibly submit a bid pursuant to the Call for Tenders, given their qualifications, abilities or experience;
- 7) I declare (please check one of the following statements):
 - (a) that I prepared this Bid without collusion and that there has been no communication, no agreement and no arrangement with any competitor;
 - (b) that I prepared this Bid after having communicated, or having made an agreement or an arrangement with one or several competitors, and that all the relevant details are disclosed in the attached document, including the names of the competitors and the reasons for the said communications, agreements or arrangements;
- 8) Without limiting the generality of the foregoing to Article 7(a) or (b), I declare that there has been no communication, agreement or arrangement with a competitor regarding:
 - (a) the prices;
 - (b) the methods, factors or formulas used to determine prices;
 - (c) whether or not to submit a bid;
 - (d) the submission of a bid that does not meet the specifications of the Call for

Tenders;

- (e) with the exception of what is specifically disclosed pursuant to Article 7(b) above;
- 9) in addition, there was no communication, agreement or arrangement with a competitor regarding the details of the quality, quantity, specifications or the delivery of goods or services covered by this Call for Tenders, except those that have been specifically authorized by the City or specifically disclosed pursuant to Article 7(b) above;
- 10) The terms and conditions of the attached Bid have not been and shall not intentionally be disclosed by the Bidder, directly or indirectly, to a competitor prior to the date and time of the official bid opening, or of the awarding of the contract, whichever comes first, unless otherwise required by law or as specifically disclosed pursuant Article 7(b).
- 11) I declare that, to my knowledge and as a result of thorough verification, no attempt was ever made by me, by one of the employees of the Bidder, by an executive officer, an administrator, an associate or a shareholder to influence or exert undue influence or coercion on the selection committee, and no attempt to obtain information from the selection committee about the Call for Tenders, and this in the case where such a committee was charged with the evaluation of our Bid;
- 12) The Bidder declares (check the box appropriate to your situation):
- (a) No lobbying activity was carried out by the Bidder or on its behalf.
- I declare that I have not exercised and that no one has exercised on behalf of the Bidder, whether as a corporate lobbyist, consultant lobbyist or organizational lobbyist, lobbying activities as defined in the *Lobbying Transparency and Ethics Act* (RSQ, chapter T-11.011) and the opinions issued by the Lobbyists Commissioner, regarding the process prior to this Call for Tenders.
- (b) Lobbying activities were carried out by or on behalf of the Bidder.
- I declare that lobbying activities as defined in the *Lobbying Transparency and Ethics Act* (RSQ, chapter T-11.011) and opinions issued by the Lobbyists Commissioner have been carried out by the Bidder or on his behalf for the process prior to this public Call for Tenders and that they have been carried out in compliance with this Act, these notices and the Lobbyists' Code of Conduct.
- 13) I declare (check the box appropriate to your situation):
- (a) that I personally, or any of the directors, shareholders, partners or officers of the Bidder, have no family, financial, business or other links that may create an appearance of conflict of interest, directly or indirectly, with one or more Council members, officer(s) or employee(s) of the City;
- (b) that I personally, or through the directors, shareholders, associates or officers of the Bidder have familial, financial or other links that may create an appearance of a conflict of interest, directly or indirectly, with the members of the Council, the following officers and/or employees of the City:

Names	Nature of the relationship or of the interest
_____	_____
_____	_____
_____	_____

(Name and signature of the person authorized by the Bidder)

(Title)

(Date)

Sworn before me at _____
this ____ day of _____ 20__

Commissioner of Oaths
for the District of _____

Or

Declared before

Witness

ANNEX II

City's Elected official, Officer or Employee Declaration of interest

1) I have familial relationships, pecuniary interests or business relationships with the following legal entities, companies or firms who are suppliers or bidders to the City as part of the bidding process or the awarding of the contract: _____
_____ (insert the name and number of the call for tenders or contract):

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

(Name and signature of elected official, officer or employee)

(Date)

Sworn before me at _____
this ____ day of _____ 20__

Commissioner of oaths
for the District of _____

Or

Declared before

Witness

ANNEX III

**Declaration of Member of the Selection Committee
and Secretary of the Committee**

I, the undersigned, _____ member of the Selection Committee *[or Secretary of the Committee]* duly appointed to this function by the General counsel of the City of Côte Saint-Luc ("City") *[or by the Municipal Council of the City of Côte Saint-Luc ("City") in the case of the Secretary of the Committee]* :

for:

(Name and number of the call for tenders)

to carry out a qualitative evaluation of the bids under the above-mentioned call for tenders (hereinafter, "Call for tenders"):

[In the case of the Secretary, substitute "to assist the members of the Committee in exercising their assigned duties"]:

state the following and certify that these statements are true and complete in every aspect.

- 1) I have read and understood the contents of this declaration;
- 2) I undertake, in carrying out the duties entrusted to me, to evaluate the bids submitted by the bidders without partiality, favour or consideration, according to the rules of ethics; *[for members of the Committee only]*
- 3) I also undertake to carry out an individual analysis of the quality of each of the conforming bids received, before the evaluation by the selection committee; *[for committee members only]*
- 4) I undertake not to divulge in any case the mandate entrusted to me by the City and to keep all the deliberations of the committee confidential;
- 5) I declare that I will take all necessary precautions to avoid placing myself in a potential conflict of interest situation and that I will have no direct or indirect interest in the Call for tenders, failing which I formally commit to denounce my interest.

(Name, signature and function held by the person making the declaration)

Sworn before me at _____
this ____ day of _____ 20__

Commissioner of oaths
for the District of _____

Or

Declared before

Witness

**PROVINCE OF QUEBEC
CITY OF CÔTE SAINT-LUC**

BY-LAW No. 2497

**BY-LAW CONCERNING CONTRACT
MANAGEMENT**

ADOPTED ON: March 12, 2018

IN FORCE ON: March 21, 2018

CERTIFIED TRUE COPY