



PROVINCE OF QUEBEC
MRC LE HAUT SAINT-FRANÇOIS
MUNICIPALITY OF BURY

BYLAW NUMBER 436-2020
« Bylaw concerning contract management »

WHEREAS on January 10, 2011, the municipal council of Bury adopted by resolution, number 2011-01-007, its *Contract Management Policy* in accordance with article 938.1.2 of the *Code municipal du Québec*;

WHEREAS since January 1, 2018, article 938.1.2 of the *Code municipal du Québec*, as amended provides that in addition to the measures already provided for in the *Contract Management Policy*, the bylaw concerning contract management must now contain measures to ensure the rotation of potential contractors with respect to contracts which involve an expense of less than \$100 000 and which can be concluded by mutual agreement;

WHEREAS this same article makes it possible to provide, in a bylaw concerning contract management, rules for awarding contracts that involve an expense of at least \$25 000 and less than \$100 000;

WHEREAS under section 278 of the *Loi visant principalement à reconnaître que les municipalités sont des gouvernements de proximité et à augmenter à ce titre leur autonomie et leur pouvoir* (L.R.Q. 2017, c.13), any contract management policy adopted under article 938.1.2 of the *Code municipal du Québec*, a bylaw concerning contract management is deemed to exist under the new applicable articles ;

WHEREAS a notice of motion for this bylaw was given at the council meeting of June 1, 2020, and that a draft bylaw was presented at this same meeting,

THEREFORE,

IT IS PROPOSED BY Councillor Alain Villemure,
AND SECONDED BY Councillor Marilyn Matheson,

AND CARRIED THAT this bylaw be and is adopted as follows:

ARTICLE 1: PREAMBLE

The preamble is in an integral part of this bylaw.

ARTICLE 2:

This bylaw is entitled bylaw number 436-2020 "Bylaw concerning contract management." It replaces and repeals the contract management policy of the municipality adopted on January 10, 2011.

ARTICLE 3: APPLICABLE MEASURES TO ALL MANDATORY TENDERS

3.1 At each call for tenders, the director general is responsible for managing the call for tenders, which includes the preparation of tender documents and the

responsibility for providing administrative and technical information concerning the call for tenders. He can enlist any person to help with the call for tenders' management or delegate the management to any person of his choosing.

- 3.2 The person responsible for managing the call for tenders cannot add an external resource person outside the Haut-Saint-François MRC, if they are not authorized to do so by the municipal council or by the director general, if he has the power to authorize such an arrangement in accordance to a bylaw authorizing him to approve contracts on behalf of the municipality.
- 3.3 When a contract is to be awarded following a public call for tenders or by invitation, the person responsible for the call for tenders must enlist at least one other person to help prepare the tender documents, to analyze bids, to review their compliance and report to the council on the process and its outcome. The person responsible for the call for tender must comply with the measure set out in paragraph 3.2.

ARTICLE 4: MEASURES ENSURING THAT BIDDERS OR THEIR ASSOCIATES HAVE NOT COMMUNICATED OR ATTEMPTED TO COMMUNICATE WITH A MEMBER OF THE SELECTION COMMITTEE IN ORDER TO INFLUENCE IT REGARDING THE CALL FOR TENDERS IN WHICH THEY HAVE SUBMITTED A BID

- 4.1 The Council delegates to the Director General the power to create any selection committee necessary to receive, study the tenders received and draw the necessary conclusions.
- 4.2 Any selection committee must be formed before the call for tenders is launched and be composed of at least three members.
- 4.3 Any member of the council, any employee and any representative thereof must always keep the identity of the members of any selection committee confidential.
- 4.4 For any call for tenders requiring the creation of a selection committee, the tender documents must contain provisions to the following effects:
 - a) All bidders must enclose with their tender a declaration solemnly attesting that neither they nor any of their representatives have communicated or attempted to communicate, for the purpose of exercising influence, with any of the members of the selection committee.
 - b) If a bidder or one of its representatives communicate or attempts to communicate with one of the members of the selection committee for the purpose of influencing its decision, their bid will be automatically rejected.

ARTICLE 5: MEASURES TO PROMOTE COMPLIANCE WITH APPLICABLE LAWS WHICH ARE INTENDED TO FIGHT AGAINST THE RIGGING OF BIDS

- 5.1 All bidders must enclose with their bid submission a declaration solemnly attesting that their tender has been prepared and submitted without collusion, communication, agreement or arrangement with any other bidder or person to agree on the prices to be submitted or to influence the prices submitted.
- 5.2 A provision should be included in the tender documents that states that if a bidder has colluded, communicated or agreed to an arrangement with

another bidder or a competitor to influence or fix the prices submitted, their bid will be automatically rejected.

ARTICLE 6: MEASURES TO PROMOTE RESPECT OF THE LOBBYING TRANSPARENCY AND ETHICS ACT AND THE DEONTOLOGICAL CODE PERTAINING TO SAID ACT.

- 6.1 Any member of the council or any employee must ensure that any person who communicates with them for the purpose of obtaining a contract, has registered with the Lobbyists Registry provided for by the *transparency and ethics in lobbying*.
- 6.2 Any bidder must enclose with his tender a declaration solemnly attesting that neither he nor any of their representatives engaged in a communication of influence for the purposes of obtaining the contract, or, if such communication of influence has taken place, upon submission of a declaration that this communication has been made after any registration required by law in the Lobbyists Registry has been made.

ARTICLE 7: MEASURES TO PREVENT INTIMIDATION, BRIBERY OR CORRUPTION

- 7.1 The municipality must, in the case of a call for tenders by written invitation, encourage as much as possible the invitation of different companies. The identity of the persons so invited may only be made public when the tenders are open.
- 7.2 Each bidder must enclose with their tender a declaration solemnly affirming that neither he nor any of their collaborators, representatives or employees have engaged, in the process of the call for tenders, in acts of intimidation, bribery or corruption,
- 7.3 The tender documents must provide that if a bidder or their representative has participated in any acts mentioned in the preceding paragraph, their bid will be automatically rejected.

ARTICLE 8: MEASURES PREVENTING CONFLICTS OF INTEREST SITUATIONS

- 8.1 Any person involved in the preparation of contractual documents or in the process or the execution of a call for tenders, including if needs be, the secretary and the members of the selection must declare any conflict of interest or any potential conflict of interest.
- 8.2 No person with a conflict of interest may participate in the preparation, execution, or process of a call for tenders or a contract.
- 8.3 All bidders must enclose with their bid a declaration solemnly attesting that there was no link causing or likely to cause a conflict of interest because of their relationship with a member of the council or an official.

ARTICLE 9: MEASURES PREVENTING ANY OTHER SITUATION LIKELY TO COMPROMISE THE IMPARTIALITY AND OBJECTIVITY OF THE PROCESS OF A CALL FOR TENDER AND THE MANAGEMENT OF THE RESULTING CONTRACT.

- 9.1 For the purpose of any call for tender, a person responsible for the call for tender is identified, who is entrusted with the task of providing all information concerning the call, and it is provided in any invitation to tender document that all potential bidders or all bidders must only contact this responsible party for any details relating to the call for tenders.

- 9.2 During any call for tenders, it is prohibited for any member of the council and any employee of the municipality to respond to any request for clarification regarding any call for tenders other than by directing the requester to the person responsible.

ARTICLE 10: MEASURES GOVERNING ANY DECISION-MAKING RELATING TO AUTHORIZING THE MODIFICATION OF A GIVEN CONTRACT

- 10.1 The municipality must, in any contract, establish a procedure governing any authorization to modify the contract and provide that such modification is only possible if it is accessory to the contract and does not change its nature.
- 10.2 When a contract must be awarded following a public call for tenders or by invitation and visits or individual meetings are held, the same information must be disseminated at each visit or meeting and to this end, a written document is given to each visitor or participant of the meeting. If a question to which the document prepared in advance does not answer arises, the question is noted and thereafter, the person responsible for the call for tenders gives the answer by the form of an addendum, if this information must be known to all potential bidders.
- 10.3 When the Municipality must, to award a contract, proceed by public tender or by written invitation, the contract can be modified by respecting the following measures:
- A) A modification which causes additional expenditure must be authorized by the council, except in an emergency, in which case, the general director may authorize the modification. If the authorization must be given by the general director, the total expenses thus authorized must not exceed 10% of the initial amount of the contract, including taxes.
 - B) Despite the measure enacted in paragraph A), a modification does not require the authorization of the council when it results from a variation of the amount to which a percentage already established must apply or from a variation of a quantity for which a unit price has been agreed. In such cases, authorization is given by the director general. However, if the total expenses resulting from the modification exceed 10% of the initial amount of the contract, including taxes, the authorization of the council is required.
 - C) In any case, the measures enacted in paragraphs A) and B) do not authorize splitting or distributing the needs of the municipality or making a modification to a contract, in order to evade the obligation to resort to a call for tenders or in order to avoid any other obligation arising from the law.
- 10.4 The person responsible for the call for tenders must provide, in any contract involving an expenditure equal to or greater than TWENTY-FIVE THOUSAND DOLLARS (\$25 000), a procedure governing any non-urgent authorization to modify the contract, including at least the following steps:
- A) Any request for modification to the contract must be made in writing
 - B) The request must clearly state the required modifications
 - C) The supplier must indicate in writing the consequences of the modification on the contract price

- 10.5 The municipality must provide in the tender documents to hold regular site meetings during the execution of the work to monitor the execution of the contract.

ARTICLE 11: MEASURES TO ENSURE THE ROTATION OF POTENTIAL CO-CONTRACTING PARTIES

- 11.1 The municipality must, prior to the award of a contract subject to the law concerning rotation measures, aim to involve the greatest number of businesses among those which are able to meet its needs by promoting, when possible, the rotation of possible contracting parties.
- 11.2 The rotation should not, however, be at the expense of the sound management of public funds.
- 11.3 When the municipality awards private contracts, it must, where possible, obtain prices beforehand from at least two companies or suppliers.

ARTICLE 12: RULES CONCERNING CERTAIN CONTRACTS

Supply contracts, construction contracts, service contracts, including professional services contracts, as well as any other contract subject to article 936 of the Municipal Code of Quebec which involves an expenditure which does not exceed \$99 999, can be concluded privately. In such a case, the measures provided for in article 11 of this bylaw, must be respected.

ARTICLE 13: PREFERENTIAL CLAUSES

- 13.1 When the municipality awards a private contract in accordance with this bylaw, it may favour a local supplier

When the municipality awards a contract following an invitation to at least two suppliers, the municipality may, after having informed the invited suppliers beforehand, award this contract to a local supplier regardless if they supplied the lowest price, provided that at least equivalent quality, its offer does not exceed 5% more than the best price submitted by a supplier outside the municipality in the case of contracts less than or equal to \$99 999 (taxes included).

- 13.2 When the municipality awards a private contract in accordance with this bylaw, it may favour a supplier holding a qualification related to sustainable development.

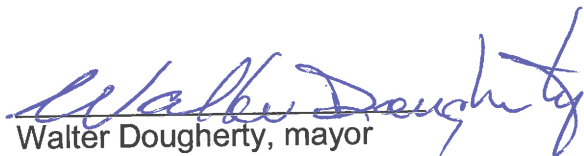
When the municipality grants a contract following an invitation to at least two suppliers, the municipality may, after having informed the invited suppliers beforehand, award a contract to a supplier holding a qualification in connection with sustainable development and not necessarily providing the lowest price, provided that, at least equivalent quality, its offer does not exceed 5% more than the best price submitted by a supplier not holding such a qualification in the case of contracts less than or equal to \$99 999 (taxes included).


ARTICLE 14: REPEAL PROVISION

The present bylaw replaces and repeals the contract management policy adopted by the municipal council on January 10, 2011, and deemed, since January 1st, to be a bylaw on contract management under the article 278 P.L. 122.

ARTICLE 15: COMING INTO FORCE

This bylaw comes into force according to law and is published on the municipality's website. In addition, a copy of these regulations is sent to MAMH.


Walter Dougherty, mayor



Louise Brière,
Director general and secretary treasurer by interim

Notice of motion: June 1, 2020
Adoption: July 6, 2020
Publication certificate: July 8, 2020
Coming into force: July 8, 2020
Transmission to MAMH: July 8, 2020