



PROVINCE OF QUEBEC  
TOWN OF KIRKLAND

## BY-LAW NO: GEN-2019-52

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### BY-LAW CONCERNING CONTRACT MANAGEMENT

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Amendment

2019-52-1 and 2019-52-2

**NOTICE**

This consolidation has not been officially adopted by the Municipal Council. It has been compiled on April 12, 2023, in order to facilitate the reading of the texts. The official text is to be found in the text of the original by-law and each of its amendments.

#### ADOPTION PROCEDURE

Notice of motion:	December 3, 2018
Draft by-law:	December 3, 2018
Adoption of by-law:	January 14, 2019
Publication:	January 23, 2019
Coming into force:	January 23, 2019

- WHEREAS pursuant to section 573.3.1.2 of the *Cities and Towns Act* (CQLR, c. C-19), every municipality must adopt a by-law on contract management;
- WHEREAS notice of motion of this By-Law was given at the regular sitting of the Municipal Council held on December 3, 2018;
- WHEREAS pursuant to section 356 of the *Cities and Towns Act* (CQLR, c. C-19), a draft of this By-Law was filed at the regular sitting of the Municipal Council held on December 3, 2018;
- WHEREAS pursuant to section 356 of the *Cities and Towns Act* (CQLR, c. C-19), copies of this By-Law were made available to the public;
- WHEREAS the Preamble forms an integral part of this By-Law;

**THE MUNICIPAL COUNCIL DECREES AS FOLLOWS:**

**TITLE I –GENERAL PROVISIONS**

**Chapter 1 – Object**

**ARTICLE 1 OBJECT**

The object of this By-Law is to establish measures specifically aimed at:

- (a) promoting compliance with any applicable anti-bid-rigging legislation;
- (b) ensuring compliance with the *Lobbying Transparency and Ethics Act* (c. T-11.011) and the *Code of Conduct for Lobbyists* (c. T-11.011, r. 2) adopted under that Act;
- (c) preventing intimidation, influence peddling and corruption;
- (d) preventing conflict of interest situations;
- (e) preventing any other situation likely to compromise the impartiality and objectivity of the call for tenders process and the management of the resulting contract;
- (f) governing the making of decisions resulting in authorization to amend a contract;
- (g) promoting a fair rotation among prospective contracting parties for contracts involving an expenditure of at least \$25,000 but below the expenditure threshold for a contract that may only be awarded further to a public call for tenders pursuant to section 573 of the *Cities and Towns Act* (CQLR, c. C-19) and that may be made by agreement in accordance with the rules adopted under this By-Law.

**Chapter 2 – Definitions and interpretation**

**ARTICLE 2 DEFINITIONS**

In this By-Law, unless the context requires otherwise, the following terms and expressions are defined as follows:

"**bid**" means a written instrument whereby a candidate undertakes to perform work for, or sell, purchase or lease goods or services to, from or on behalf of the Town;

"**bidder**" means a candidate who submits a bid to the Town;

"**business relationship**" means, when used in reference to two persons, that they have one of the following types of relationships:

- (i) one person is in a position to influence the activities of the other, i.e.; relations between the two are such that one has the ability to directly or indirectly exercise control or significantly influence decisions concerning the financing or operations of the other;
- (ii) a natural person vis-à-vis a legal person in which at least 75% of its issued and full voting securities are owned by that natural person;

(iii) closely related legal persons;

"**contracting party**" means the person to whom a contract has been awarded and who has received notification thereof;

"**Director General**" means the Director General of the Town and in the event of his absence, inability or refusal to act or in the event of a vacancy in his position, means the Assistant Director General;

"**family relationship**" means, when used in reference to two individuals:

- (i) natural persons, one of whom is, in relation to the other, an ascendant, descendant, brother or sister;
- (ii) spouses;
- (iii) natural persons, one of whom is the spouse of the son or daughter, or father or mother of the other;
- (iv) natural persons, one of whom is the son, daughter, father or mother of the other person's spouse;

"**relevant administrative unit**" means the Town's administrative unit with operational responsibility for the contract in question;

"**supplier**" means a person in a position to provide goods or services or perform work that meets the Town's stated requirements and needs;

"**Town**" means the Town of Kirkland;

### Chapter 3 – Application

#### ARTICLE 3 TYPES OF CONTRACTS COVERED

This By-Law applies to any contract involving an expenditure that has been awarded by the Town, with the exception of employment contracts. It also applies to any procedure related to the conclusion of a contract, as well as to any subcontract directly or indirectly related to such contract, regardless of its value.

#### ARTICLE 4 PERSON RESPONSIBLE FOR APPLYING THIS BY-LAW

Subject to provision to the contrary, the Director General is responsible for ensuring the application of this By-law.

### TITLE II – DISCUSSIONS AND COMMUNICATIONS WITH SUPPLIERS

#### Chapter 1 – Ethical rules specific to contract management

#### ARTICLE 5 CODE OF ETHICS

In accordance with their respective codes of ethics and rules of professional conduct, the Town's elected office holders and employees must promote integrity, fairness and transparency in the contracting process and must contribute to maintaining public confidence in that process.

#### ARTICLE 6 CONFLICTS OF INTEREST

All persons involved in the contract management process on behalf of the Town must avoid placing themselves in potential conflict situations likely to require that they decide between their personal interests and those of the Town. In such situations, they must declare their interests and refrain from participating directly or indirectly in the contracting process.

#### ARTICLE 7 GIFT, PAYMENT, REMUNERATION OR BENEFIT

No elected office holders or administration employees may, in connection with the contracting process, accept, receive or solicit from any person a benefit for themselves or any of their relatives, from a prospective bidder.

No bidder, supplier or contracting party may make a donation, payment, gift or remuneration, or grant any other benefit to an elected office holder, employee, selection committee member or any other person involved in the contracting process.

Every gift, payment, remuneration or benefit granted to an employee, a selection committee member or a Municipal Council member by a prospective bidder with a view to being awarded a contract, may result in rejection of its bid or rescission of the contract.

#### **ARTICLE 8 GIFT, PAYMENT, REMUNERATION OR BENEFIT – EXCEPTIONS**

Notwithstanding articles 5, 6 and 7, an elected office holder or employee of the Town may:

- (a) attend an event to which representatives of public or municipal bodies, or any group thereof are invited, and which is sponsored by a firm or current or potential supplier of the Town;
- (b) represent the Town in an activity attended by current or potential suppliers of the Town when the Town pays the costs related to participation therein by the elected office holder or employee.

### **Chapter 2 – Influence communication**

#### **ARTICLE 9 ACTIVITIES COVERED**

When a supplier communicates with one or more Town representatives, such communication may constitute lobbying or a lobbying activity governed by the *Lobbying Transparency and Ethics Act* (chapter T-11.011).

In the procurement cycle, lobbying activities are communications aimed at influencing decisions concerning the awarding of a contract further to an invitation to tender or negotiation by agreement.

The aforementioned Act also applies to communications made outside the call for tenders process, such as requests regarding modification of the tender documents or any other preliminary measure, initiated by an enterprise, concerning the technical content of such documents.

Notwithstanding the foregoing, the Act does not apply to the following activities:

- (a) representations made solely for the purpose of providing information regarding the existence and characteristics of a product or service;
- (b) the mere filing of a bid by an enterprise further to a public call for tenders;
- (c) any submission made in the negotiation, subsequent to the awarding of a contract, of conditions for the performance of the contract;
- (d) any submission made in response to a written request from a Town representative.

#### **SECTION 10 THE LOBBYING TRANSPARENCY AND ETHICS ACT**

Any person who communicates with a Town representative in an attempt to influence a decision pertaining to a contract must comply with the provisions of the *Lobbying Transparency and Ethics Act* (c. T-11.011).

#### **ARTICLE 11 PRELIMINARY LOBBYING MEASURES – REGISTRATION, VERIFICATION AND REPORTING**

To ensure compliance with the *Lobbying Transparency and Ethics Act* (c. T-11.011) and the *Code of Conduct for Lobbyists* (c. T-11.011, r. 2):

- (a) the elected office holder or employee involved must verify if the person seeking to influence such office holder or employee (the lobbyist) is registered in the registry of lobbyists and if the registration (indicating the mandate and object of the activities) faithfully reflects that person's lobbying activities with the elected office holder or employee;
- (b) in the event of non-compliance with the Act or the Code, including the refusal to register as a lobbyist, the elected office holder or employee involved must inform the lobbyist of such non-compliance, must refrain from dealing with the lobbyist, and must report any contravention of the Act or Code to the Quebec Lobbyists Commissioner.

**ARTICLE 12 RETENTION OF INFORMATION CONCERNING COMMUNICATIONS OF INFLUENCE**

Elected office holders and municipal employees must keep all documents such as agendas, e-mails, accounts of telephone conversations, letters, minutes of meetings, presentation documents, offers of services, faxes etc., pertaining to all communications of influence with them by any person, regardless whether or not such documents are in paper or electronic form and whether or not the communications were made in compliance with the *Lobbying Transparency and Ethics Act* (c. T-11.011), the *Code of Conduct for Lobbyists* (c. T-11.011, r. 2) or notices issued by the Lobbyists Commissioner.

**ARTICLE 13 COMMUNICATION WITH A PROSPECTIVE BIDDER**

During the bidding period, no prospective bidder and no person acting for the bidder shall communicate with any person other than the Town's representative(s) designated for that purpose in the general specifications of the tender documents, regarding the call for tenders.

Except to the extent and in accordance with the channel and method of communication stipulated in the tender documents, as of the invitation to tender or publication of the notice of the call for tenders, no elected office holder or employee may engage in any communication with a prospective bidder regarding the contract concerned or the tender process that has commenced.

**ARTICLE 14 ATTESTATION OF INDEPENDENT BID PREPARATION**

A supplier, service provider or contractor that enters into a contract with the Town further to a competitive tendering process provided for in Title IV involving an expenditure, including applicable taxes, of \$25,000 or more, must sign and submit Annex A – *Attestation of Independent Bid Preparation, of no Conviction under the Federal Competition Act and of Compliance with Lobbying Disclosure Requirements*.

By filing a bid with the Town, the bidder solemnly affirms that there has not been and that there will not be any influence communication, including by a person registered as a lobbyist, during the bidding period.

**TITLE III – ROLES AND RESPONSIBILITIES OF ELECTED OFFICERS, EMPLOYEES AND MANDATARIES****Chapter 1 – Decision-making process****ARTICLE 15 CONFIDENTIALITY**

As soon as the tendering process is launched and until the contract is awarded by the competent authority or the bids received are rejected, elected officials and employees must:

- (a) exercise the utmost discretion regarding the call for tendering and contract award processes; and
- (b) preserve the confidentiality of information provided to them in the aforementioned processes.

**ARTICLE 16 INTEGRITY OF THE DECISION-MAKING PROCESS**

No employee may:

- (a) disclose the name of a prospective bidder until all bids have been opened;
- (b) communicate with a bidder between the time the bids are opened and the time they are rejected or the contract is awarded, unless extraordinary circumstances so warrant, in which case the communication must be made through a Purchasing Department employee.

**ARTICLE 17 MANDATARIES AND CONSULTANTS**

Where applicable, a mandatary or consultant appointed by the Town to draft tender documents or assist it in that process, must, to the extent possible, preserve the confidentiality of the mandate, of the work carried out thereunder and of all information received in the performance thereof.

**Chapter 2 – Declaration of interest**

**ARTICLE 18 DECLARATION OF PECUNIARY INTERESTS**

Every elected office holder or employee likely to be involved in any manner whatsoever in a contracting process must:

- (a) make a written declaration of interest regarding any family relationships, pecuniary interests or business relationships they may have with a person who is a prospective bidder or co-contractor; and
- (b) declare therein any potential conflict of interest situation

The declaration must be updated whenever the information provided therein changes. The Declaration and its updated version must be given to the Director General and to the Town Clerk. The latter shall deposit the declaration and any updated version thereof in the Town archives.

**Chapter 3 – Reporting****ARTICLE 19 MANDATORY REPORTING OF COLLUSION, BID-RIGGING, INFLUENCE PEDDLING, INTIMIDATION OR CORRUPTION**

Every elected office holder or employee must report the following to the Director General:

- (a) any situation of collusion, bid-rigging, influence peddling, intimidation or corruption that he or she has witnessed or been advised of;
- (b) any situation or action of which the office holder or employee has knowledge and believes to be a contravention of this By-Law.

No person may take reprisals, or order that reprisals be taken, against an employee on the grounds that the employee reported a situation referred to in paragraphs (a) or (b) or cooperated in good faith in an investigation conducted further to such a report. The following are deemed to be reprisals against an employee:

- (a) a disciplinary sanction imposed on the employee;
- (b) demotion;
- (c) dismissal;
- (d) a measure adversely affecting the employee's employment or conditions of employment;
- (e) a threat to impose any of the measures referred to in subparagraphs (a) to (d).

The second paragraph does not prevent the Town from suspending, dismissing or transferring an employee for just and sufficient cause, proof of which rests with the Town.

**TITLE IV – THE CONTRACT MANAGEMENT PROCESS****Chapter 1 – Method of soliciting tenders****ARTICLE 20 CONTRACTS INVOLVING AN EXPENDITURE OF \$25,000 OR MORE BUT BELOW THE PUBLIC TENDER THRESHOLD**

A contract involving an expenditure of \$25,000 or more but less than the public call for tenders threshold may be awarded using one of the competitive bidding mechanisms provided for in section 21 or by mutual agreement.

The choice of the method of solicitation or the mutual agreement is made by the relevant administrative unit, accompanied by the procurement department, within the limits permitted in the *Internal By-law of the Municipal Council Pertaining to the Delegation of Powers in Matters Relating to Contracts and to Human Resources* and in accordance with the *Cities and Towns Act* (CQLR, c. C-19).

**ARTICLE 21 COMPETITIVE BIDDING MECHANISMS**

For the purposes of articles 20 to 24, the following methods of solicitation constitute competitive bidding mechanisms:

a) **request for quotations:** process whereby at least two suppliers, service providers or contractors are invited to submit a quotation in writing, by email or otherwise. The Town describes the good to be acquired, the service required or the work to be performed. The Town shall determine the methods and duration of publication and the methods for filling and opening the quotations which shall be set out in the request for quotations documents;

b) **call for tenders by invitation:** solicitation of bids by way of a call for tenders by invitation to at least two or more suppliers, service providers or contractors. The Town shall determine the methods and duration of publication and the methods for filling and opening the bids, which shall be set out in the call for tenders by invitation documents. The Town may send the call for tenders by invitation documents by e-mail, through the Government of Quebec's electronic tendering system ("SEAO") or otherwise;

c) **public call for tenders:** solicitation of bids by way of a public call for tenders published on the SEAO.

**ARTICLE 22 PUBLICATION DEADLINES**

For any contract for which the expenditure is lower than the threshold for a public call for tenders, the choice of the publication period for the request for quotations or the call for tenders by invitation is made by the relevant administrative unit, accompanied by the procurement department.

A period shorter than the minimum period of eight days provided for in section 573.1 of the *Cities and Towns Act* (RLRQ, c. C-19) may be chosen.

**ARTICLE 22.1 LOCAL PURCHASING**

Pursuant to section 124 of *An Act to establish a new development regime for the flood zones of lakes and watercourses, to temporarily grant municipalities powers enabling them to respond to certain needs and to amend various provisions* (S.Q. 2021, chapter 7), the present article shall remain in force for a period of three (3) years, until June 25, 2024.

Without limiting the principles and measures set out in this By-Law concerning the rotation of suppliers and subject to sound management considerations, in the awarding of any contract involving an expenditure below the threshold for public calls for tenders, the Town shall favour Quebec goods and services as well as suppliers, insurers and contractors who have an establishment in Quebec.

For the purposes of this article, an establishment in Quebec 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 is accessible during normal business hours.

Quebec goods and services are goods and services for which the majority of the design, manufacturing, assembly and realization is done from an establishment located in Quebec.

**ARTICLE 22.2 ACCESSIBLE PROCUREMENT**

In accordance with Section 61.3 of the *Act to secure handicapped persons in the exercise of their rights with a view to achieving social, school and workplace integration*, chapter E-20.1, the Town shall take into account accessibility for handicapped persons in its procurement process when purchasing or leasing goods and services. It thus promotes the implementation of concrete means to create accessible environments, both for citizens who request services and for its employees.

**ARTICLE 23 METHOD OF AWARDING CONTRACTS**

For the purposes of articles 21 and 22, the following methods of awarding contracts apply:

(a) **Highest quality score:** contract awarded to the bidder with the highest final score further to an assessment of quality, which assessment may also include consideration of price.

(b) **Lowest price:** contract awarded on the basis of lowest price.

**ARTICLE 24 DETERMINATION OF LOWEST PRICE**

For the purposes of determining lowest price, the Town may:

- (a) provide that more than one contract may be awarded further to the same bid solicitation;
- (b) provide that the lowest bid price be determined taking into account the total acquisition cost, which must be based on quantifiable and measurable elements identified prior to the bid solicitation;
- (c) the total acquisition cost includes additional costs not included in the tendered price but that would be borne by the public body during the useful life of the goods acquired, which may include installation, maintenance, support and training costs and the cost of any other item considered relevant in relation to the procurement requirement.

#### **ARTICLE 25 PRINCIPLE OF ROTATION AMONG SUPPLIERS OR CONTRACTORS**

The Town must aim for the participation in the tender process of the greatest possible number of companies from among those that can meet its requirements by promoting rotation among potential contracting parties whenever possible.

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

#### **ARTICLE 26 CONTRACTS INVOLVING AN EXPENDITURE EXCEEDING THE THRESHOLD FOR PUBLIC CALLS FOR TENDERS**

Contracts involving an expenditure exceeding the threshold for public calls for tenders are governed by the *Cities and Towns Act* (CQLR, c. C-19). Such contracts may not be granted except pursuant to a public call for tenders and must be awarded to the lowest conforming bidder or the bidder who obtained the highest score where a bid weighting and evaluation system is used, subject to the exceptions set forth in the aforementioned Act.

#### **ARTICLE 27 AUTHORIZATION TO ENTER INTO CERTAIN CONTRACTS**

A contract involving an expenditure below the public bidding threshold must be authorized in accordance with the *Internal By-law of the Municipal Council Pertaining to the Delegation of Powers in Matters Relating to Contracts and to Human Resources*.

A contract involving an expenditure equal to or greater than the public tender threshold must be authorized by the Municipal Council of the Town.

### **Chapter 2 – Selection Committee**

#### **ARTICLE 28 SECRETARY**

The Director General appoints the secretary of a selection committee.

#### **ARTICLE 29 ROLE AND RESPONSIBILITY OF THE SECRETARY**

The secretary of a selection committee coordinates and guides the work of the committee. The secretary ensures the rigour and transparency of the selection committee's preparations, management and follow-up.

The secretary is not an evaluating member of the selection committee and may not vote in its deliberations; however, the secretary technically supports the formulation of the committee's opinion. The secretary is responsible for liaising between selection committee members and the employee responsible for the tender file in the relevant administrative unit.

The Secretary must preserve the confidentiality of the identity of the members of the selection committee.

#### **ARTICLE 30 CONSTITUTION OF A SELECTION COMMITTEE**

In order to preserve the confidentiality of the identity of individuals, the composition of the committee is delegated to Director General. This delegated authority is exercised in writing and is recorded in the procurement file.

When forming a selection committee, the Director General must comply with the following rules:



- (a) preference must be given to persons with no hierarchical relationship between them;
- (b) no member of the Municipal Council may be appointed as a member of the selection committee;
- (c) a selection committee must be composed of at least four (4) members, including three (3) evaluating members and one (1) acting as the secretary;
- (d) the members must be impartial and have no direct or indirect interest in the object of the call for tenders.

#### **ARTICLE 31 DECLARATION OF INTEREST AND CONFIDENTIALITY UNDERTAKING OF THE MEMBERS AND SECRETARY OF A SELECTION COMMITTEE**

Before taking office, each member of a selection committee must complete, sign and deposit in the tender file a *Declaration of Interest and Confidentiality Undertaking – Undertaking of Selection Committee Member* (Annex C).

Before taking office, the secretary of the selection committee must complete, sign and deposit in the tender file a *Declaration of Interest and Confidentiality Undertaking – Undertaking of Selection Committee Secretary* (Annex D).

#### **ARTICLE 32 PROTECTION OF THE IDENTITY OF SELECTION COMMITTEE MEMBERS**

No member of a selection committee may disclose the mandate entrusted to him or her by the Town.

The secretary of the selection committee, every elected official and every employee must at all times, preserve the confidentiality of the identity of every selection committee member.

#### **ARTICLE 33 BID EVALUATION PROCESS CONDUCTED BY SELECTION COMMITTEE MEMBERS**

In performing its mandate, the committee must:

- (a) evaluate each bid individually and not compare them;
- (b) assign a number of points for each weighting criterion;
- (c) in a selection committee meeting, confirm normative compliance of the tenders received;
- (d) work towards consensus in committee;
- (e) sign the evaluation made in committee.

The selection committee must evaluate the tenders in accordance with the provisions of the *Cities and Towns Act* (CQLR, c. C-19) and respect the principle of equality of bidders.

### **TITLE V – POST-CONTRACTUAL MANAGEMENT**

#### **Chapter 1 – Amendments to the initial contract**

#### **ARTICLE 34 PRINCIPLES**

A contract may not be amended unless the proposed amendment is accessory and does not alter the nature of the contract.

The accessory elements that may be amended must be interpreted narrowly further to a systematic analysis.

#### **ARTICLE 35 ESTABLISHING THE ACCESSORY NATURE OF AN AMENDMENT**

To establish the accessory nature of an amendment, the Town shall consider the following factors:

- (a) whether the contract is for a fixed-price or on a unit-price basis;
- (b) whether performance of the initial contract becomes impracticable, impossible, unachievable, or unable to be complied with unless it is amended;
- (c) whether the goods, services or work that is the subject of the amendment could foreseeably be included in the initial contract;
- (d) the cost of the amendment in relation to the value of the contract awarded;
- (e) the site where the additional work is to be performed or the nature of the additional goods required;
- (f) the context of performance of the additional work;
- (g) the methods, practices, parts, accessories, tools or equipment required to perform the work covered by the amendment; and
- (h) the evaluation made in committee.

#### **ARTICLE 36 AMENDMENT AUTHORIZATION PROCESS**

Any amendment to a contract must first be subjected to a rigorous and documented analysis

The relevant administrative unit must seek the Director General's approval of the expenditure for any supplement already granted by the Municipal Council, as stipulated in the *Internal By-law of the Municipal Council Pertaining to the Delegation of Powers in Matters Relating to Contracts and to Human Resources*.

#### **Chapter 2 – Performance Evaluation**

#### **ARTICLE 37 PERFORMANCE EVALUATION**

The Town may conduct a formal performance evaluation of a contracting party whose performance is regarded as unsatisfactory.

The Town may use such an evaluation:

- (a) to exclude a supplier from the list of suppliers, if applicable;
- (b) to reject a supplier in a public call for tenders, in accordance with the provisions of the *Cities and Towns Act* (CQLR, c. C-19);

### **TITLE VI – FINAL PROVISIONS**

#### **Chapter 1 – Complaint**

#### **ARTICLE 38 COMPLAINT AND REPORT**

Any person who witness the commission of an act that in that person's opinion contravenes the applicable laws governing collusion and bid-rigging, influence peddling or corruption, or constitutes intimidation, or which in that person's opinion contravenes a provision of this By-Law or the tender documents, must advise the designated Town representatives without delay. The complaint will be forwarded to the Town Clerk.

The Town Clerk receives the complaint or allegation and shall notify the Director General thereof.

The receipt and follow-up of such a complaint must be conducted in a manner that ensures the confidentiality of the complainant's identity, to the extent provided by law.

#### **Chapter 2 – Sanctions**

#### **ARTICLE 39 CONTRAVENTION BY ELECTED OFFICE HOLDER**

An elected office holder who contravenes this By-Law is liable to the sanctions stipulated in section 573.3.4 of the *Cities and Towns Act* (CQLR, c. C-19).

#### **ARTICLE 40 CONTRAVENTION BY EMPLOYEE**

An employee who contravenes any provision of this By-Law is liable to the disciplinary sanctions formulated on an escalating punishment basis according to the seriousness of the contravention.

The aforementioned sanctions include suspension without pay or dismissal.

#### **ARTICLE 41 CONTRAVENTION BY BIDDER**

If a bidder has directly or indirectly contravened its obligations under this By-Law, the Town may reject that bidder's bid if, in the Town's view, such a course of action is warranted by the seriousness of the contravention.

The Town may reject a bid on the grounds of non-compliance with the *Lobbying Transparency and Ethics Act* (CQLR, c. T-11.011), the *Code of Conduct for Lobbyists* (chapter T-11.011, r. 2) or notices issued by the Quebec Lobbyists Commissioner. If the non-compliance is discovered after a contract has been awarded, the Town may refuse to sign the contract. If the contract has already been signed, the Town may rescind it.

#### **ARTICLE 42 CONTRACTING PARTY OR SUPPLIER**

In addition to any penalty the Town may impose under the contract between it and a contracting party or supplier, the Town may unilaterally terminate the contract in the event of contravention of this By-law by the contracting party or supplier.

#### **ARTICLE 43 MEMBER OF A SELECTION COMMITTEE**

In addition to any other applicable sanction, a selection committee member who contravenes this By-Law shall be automatically excluded from the committee.

### **Chapter 23– Miscellaneous provisions**

#### **ARTICLE 44 CONTRACT AWARD PROCESS AFTER THE COMING INTO FORCE OF THIS BY-LAW**

This By-law applies to any contract for which the award process commenced after the coming into force of this By-law.

#### **ARTICLE 45 ANNUAL REPORT**

In accordance with section 573.3.1.2 of the *Cities and Towns Act*, the Assistant Director General shall table a report on the application of the by-law at least once a year at a sitting of the council.

#### **ARTICLE 46 ANNEXES**

Annexes A to D form an integral part of this By-law as if reproduced at length herein.

#### **ARTICLE 47 COMING INTO FORCE**

This By-law comes into force on January 23, 2019 in accordance with the law and repeals the Contract Management Policy of the Town of Kirkland.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Town Clerk

**ATTESTATION OF INDEPENDENT BID DETERMINATION, OF NO CONVICTION UNDER THE FEDERAL COMPETITION ACT AND OF COMPLIANCE WITH LOBBYING DISCLOSURE REQUIREMENTS**

I the undersigned, [name and title of person authorized by the supplier] in submitting the enclosed bid (hereinafter referred to as the "Bid") to the Town of Kirkland, do hereby certify that the following statements are complete and accurate.

ON BEHALF OF: [name of supplier] (hereinafter referred to as the "supplier").

I hereby certify the following:

Check

- 1. The supplier has prepared the Bid without collusion and has not, in any manner whatsoever, directly or indirectly, communicated, established communication with, or entered into an agreement or arrangement with, any competitor regarding: 
  - a) prices;
  - b) methods, factors or formulas used to establish prices;
  - c) the decision to submit, or not to submit, a bid;
  - d) the submission of a bid that does not meet the specifications of the call for tenders.

For the purposes of this attestation and the Bid, "competitor" means any person, natural or legal, whether affiliated with the supplier or not, who, in connection with the project identified above:

- a) received a written invitation to submit a bid; or
  - b) could potentially submit a bid in response to the call for tenders;
- 2. Neither the supplier nor any of its directors has, in the last five (5) years, been convicted of an offence under the *Competition Act* (R.S.C, 1985, c. C-34) pertaining to a public call for tenders or a contract entered into with the government in Canada, or, if convicted, has been pardoned for such offence.
- 3. No part of the Bid has been or will be disclosed by the supplier directly or indirectly to any competitor prior to the date and time of the official bid opening.
- 4. All lobbying efforts or communications by the **supplier's** representatives addressed to the Town's representatives have been in compliance with the *Lobbying Transparency and Ethics Act* (CQLR, c. T-11.011) and the *Code of Conduct for Lobbyists* (chapter T-11.011, r. 2).
- 5. I have read and understand the contents of this attestation.
- 6. I am authorized by the supplier to sign this attestation.
- 7. I acknowledge that the Bid may be disqualified and hence rejected if any statement provided in this attestation is incomplete or inaccurate.
- 8. I acknowledge that should the **Town** discover that in the course of preparing the Bid and, notwithstanding this declaration, there has been collusion or, if applicable, a conviction under the *Competition Act* (R.S.C., 1985, c. C-34), any contract that may have been awarded to the supplier in ignorance of that fact shall be rescinded and an action for damages may be brought against the supplier and any person involved in the collusion.

AND I HAVE SIGNED, at [name of the municipality]

[SIGNATURE]

[DATE]

**UNDERTAKING OF THE PROFESSIONAL ENGAGED TO PREPARE THE CALL FOR  
TENDER OR FOR ANOTHER PURPOSE**

**Call for Tenders ABC 2019-01**  
**Mandate [Title of mandate]**

I, the undersigned, [name] performing my duties as [title] with [firm] hereby formally declare as follows:

1. I am an employee of the aforementioned enterprise, which was invited to take part in the above-mentioned mandate for the Town of Kirkland (hereinafter referred to as "the Town");
2. For the purposes of the services required, I hereby declare that I have no interest, direct or indirect, pecuniary or otherwise, in any of the matters or subjects concerning, directly or indirectly, the object of the mandate entrusted to me;
3. I hereby undertake to avoid any situation likely to affect my ability to perform the mandate in a fully independent manner and, if applicable, I will forthwith advise the **designated** Town's representatives of any change in that respect;
4. I hereby undertake for an indefinite period that I will maintain the strictest secrecy and will not disclose or allow to be disclosed to any person, any information or document in any form whatsoever, that has been communicated to me or of which I become aware during the mandate entrusted to me;
5. I further undertake for an indefinite period that I will not use any information or document for any purpose other than in connection with the pre-contractual and contractual dealings, as the case may be, between my employer and the Town and that I will return to the Town all documents or copies of documents obtained in connection with the mandate;
6. I undertake for an indefinite period that I will take the necessary measures to ensure that this undertaking is complied with and that I will provide security measures to control access to, use of and destruction of any information or documents provided to me by the Town;
7. I have been advised that my failure to comply with any provision of this confidentiality undertaking exposes me or my employer to the appropriate recourses in order to compensate or indemnify the Town for the prejudice caused thereby.

AND I HAVE SIGNED at [name of municipality], on [ ] day of [ ] two thousand nineteen.

[SIGNATURE OF THE DECLARANT]

**DECLARATION OF INTEREST AND CONFIDENTIALITY UNDERTAKING****UNDERTAKING OF SELECTION COMMITTEE MEMBER****Call for tenders ABC 2019-01**  
**Mandate [Title of the mandate]**

I, the undersigned, [name] selection committee member duly appointed to that position by [first name and surname], Director General, for the purpose of making a qualitative evaluation of the bids pursuant to the above-mentioned call for tenders (hereinafter referred to as the “Call for Tenders”) declare as follows and certify that the declarations are true and complete in all respects.

1. I have read and understand the contents of this declaration;
2. I declare that I unreservedly accept the mandate entrusted to me, and will ensure that it remains confidential;
3. I hereby declare that I have no interest, direct or indirect, pecuniary or otherwise, in any of the matters or subjects concerning, directly or indirectly, the object of the Call for Tenders respecting which I have been mandated;
4. I hereby undertake to avoid any situation likely to affect my ability to perform the mandate in a fully independent manner, and, if applicable, I will forthwith advise the **designated** Town’s representatives of any change in that regard;
5. I undertake for an indefinite period that I will maintain the utmost secrecy, and will not disclose or allow to be disclosed to any person any information or document, regardless of its form, that may be communicated to me or that I may become aware of in the course of the mandate entrusted to me;
6. I hereby certify that no enterprise that has submitted a bid in connection with this mandate has communicated with me to:
  - 6.1. ascertain, or attempt to ascertain the names of any members of the selection committee;
  - 6.2. attempt to influence the evaluation of the bids received;
  - 6.3. make me an offer, make a donation, pay any remuneration or provide me with any benefit of any kind in relation to this mandate.

I undertake to report any new fact in this respect to the secretary of the committee or to the Director General.

7. I further undertake for an indefinite period that I will not use such information or documents for any purpose other than to evaluate the quality of the bids submitted;
8. I undertake that in performing the duties entrusted to me, I will evaluate each submitted bid impartially, without favour or consideration, and in accordance with the governing rules of ethics;
9. I further undertake that I will individually evaluate the quality of each of the conforming bids submitted, prior to the selection committee’s review, in accordance with the applicable procedure and without knowledge of the price.

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Signature of the selection committee member

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**SOLEMN DECLARATION** made before me

Made in Kirkland, Québec  
this            day of

**DECLARATION OF INTEREST AND CONFIDENTIALITY UNDERTAKING****UNDERTAKING OF THE SECRETARY OF THE SELECTION COMMITTEE****Call for tenders ABC 2019-01****Mandate [Title of the mandate]**

I, the undersigned, [name] secretary of the selection committee, duly appointed to that position by [first name and surname], Director General, to assist, as defined in the Town of Kirkland *By-Law Concerning Contract Management*, the selection committee in performing the duties incumbent on it under the *Cities and Towns Act* (CQLR, c. C-19).

1. I have read and understand the contents of this declaration;
2. I declare that I unreservedly accept the mandate entrusted to me, and will ensure that it remains confidential;
3. I hereby declare that I have no interest, direct or indirect, pecuniary or otherwise, in any of the matters or subjects concerning, directly or indirectly, the object of the call for tenders respecting which I have been mandated;
4. I hereby undertake that I will avoid any situation likely to affect my ability to perform, in a fully independent manner, the mandate and that, where applicable, I will forthwith advise the designated Town's representatives of any change in that regard.
5. I undertake for an indefinite period that I will maintain the utmost secrecy, and will not disclose or allow to be disclosed to any person any information or document, regardless of its form, that may be communicated to me or that I may become aware of in the course of the mandate entrusted to me;
6. I hereby certify that no enterprise that has submitted a bid in connection with this mandate has communicated with me to:
  - 6.1. ascertain, or attempt to ascertain the names of any members of the selection committee ;
  - 6.2. attempt to influence the evaluation of the bids received;
  - 6.3. make me an offer, make a donation, pay any remuneration or provide me with any benefit of any kind in relation to this mandate.
7. I further undertake for an indefinite period that I will not to use the aforementioned information or documents for any purpose other than to evaluate the quality of the submitted bids;

\_\_\_\_\_  
Signature of the secretary of the selection committee

\_\_\_\_\_  
Made in Kirkland, Québec  
this        day of