



PROVINCE OF QUÉBEC
CITY OF BEACONSFIELD

BY-LAW BEAC-151

BY-LAW CONCERNING CONTRACT MANAGEMENT

Adopted at the regular Council meeting
held on February 20, 2023



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At a regular Council meeting of the City of Beaconsfield, held at the Council Chamber, 303 Beaconsfield Boulevard, Beaconsfield, Québec, on Monday, February 20, 2023, at 8 p.m.;

WERE PRESENT: His Honour the Mayor Georges Bouelle, Councillors Dominique Godin, Martin St-Jean, Robert Mercuri, David Newell, Roger Moss and Peggy Alexopoulos

WHEREAS a Contract Management Policy was adopted by the Council of the City of Beaconsfield on December 20, 2010, and revised on March 24, 2014, in accordance with section 573.3.1.2 of the Cities and Towns Act (C.T.A.);

WHEREAS the City wishes, as allowed by the 4th paragraph of section 573.3.1.2 of the C.T.A., to determine the contracting rules for an expenditure of between \$25,000 and the expenditure threshold for a contract that can be awarded only after a public call for tenders under section 573 of the C.T.A.;

WHEREAS this by-law meets the objectives for transparency and sound management of public funds;

WHEREAS this by-law repeals and replaces By-law BEAC-140 concerning contract management;

WHEREAS the City Clerk confirms that the aim of this by-law is to determine the measures pertaining to contract management for any contract that may be reached by the City, including certain contracting rules that involve an expenditure of at least \$25,000 but below the expenditure threshold for a contract that can be awarded only after a public call for tenders under section 573 of the C.T.A.;

WHEREAS a draft by-law was filed and a notice of motion of the present by-law was given at the regular council meeting held on Monday, January 23, 2023;

On motion by Councillor Dominique Godin, seconded by Councillor Peggy Alexopoulos and UNANIMOUSLY RESOLVED:

COUNCIL FOR THE CITY OF BEACONSFIELD DECREES AS FOLLOWS:

1. Preamble

The preamble forms an integral part of this by-law.

Pursuant to the provisions of the *Cities and Towns Act* (hereinafter the C.T.A.), the City hereby implements various measures to achieve the following:

- a) Ensure compliance with any applicable anti-bid-rigging legislation;
- b) Ensure compliance with the *Lobbying Transparency and Ethics Act* (R.S.Q., chapter T-11.011) and the *Code of Conduct for Lobbyists* (R.L.R.Q., c. T-11.011, r.2) adopted under that Act;
- c) Prevent intimidation, influence peddling and corruption;
- d) Prevent conflict of interest situations;
- e) Prevent any other situation liable to compromise the impartiality or objectivity of the call for tenders process or the management of the resulting contract;
- f) Govern the decision-making process authorizing the amendment of a contract;
- g) Favour rotation of future contractors for contracts awarded by mutual agreement that involve an expenditure of between \$25,000 and the expenditure threshold for a contract that can be awarded only after a public call for tenders under section 573 of the C.T.A.;
- h) Promote Québec goods and services as well as suppliers, insurers and contractors who have an establishment in Quebec;



2. Definitions

Under the present by-law, the following terms have these meanings:

"Administration": officer or employee of the City.

"Short-form public call for tenders": invitation to bid by means of a public call for tenders for which the publication method, duration of the call for tenders and the method for opening tenders are set out in the invitation to bid.

"Contracting party": natural or legal person awarded a contract by the City.

"Contract by mutual agreement": contract granted following negotiation between the parties without a call for tenders, a quote or any other type of competitive procedure.

"Elected official": member of the Municipal Council.

"Request in writing for price": invitation procedure to at least two suppliers by means of a request in writing for price. The City establishes the communication methods for this request in writing for price and the procedure for submitting and opening the bids received as a result of its request.

"Supplier": natural or legal person able to provide the goods and services meeting the requirements and needs of the City.

"Bidder": an executive officer, director, shareholder or employee of a company and any other mandatary of that company who participates in a call for tenders process.

"Mandatary": natural or legal person designated by the City to represent it in accomplishing a legal act with a third party and who, by this acceptance, is obliged to carry out that act.

3. Application

3.1 Types of contract

The present by-law applies to any contract involving an expenditure awarded or allocated by the City.

3.2 Person responsible for the application of the present by-law

The Director General is responsible for the application of this by-law.

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

4.1 Mandatory denunciation of a situation involving collusion, bid-rigging, influence peddling or corruption

Any member of the City's administration or any elected official who becomes aware of a situation of collusion, bid-rigging, influence peddling, intimidation, or corruption, or who witnesses such a situation, must report it to the person responsible for the application of the present by-law or, if the situation involved concerns this person, to the "Direction des enquêtes et des poursuites en intégrité municipale".

4.2 Confidentiality and discretion

The administration and its mandataries as well as any elected official must, in any call for tenders or contract award process, including before and after the process, conduct themselves with absolute discretion and preserve the confidentiality of information disclosed to them regarding such process.

Specifically, they must at all times, in accordance with the *Cities and Towns Act*, refrain from disclosing information revealing the number and identity of the persons who have submitted a tender or who requested a copy of the invitation to tender, of a document to which it refers, or of an additional document related thereto, until the opening of tenders.



A City mandatary responsible for drafting one or more documents used in a call for tenders or who assists the City in such a process must also keep confidential the work carried out in connection with their mandate.

4.3 Site visit and information session

Should a site visit or an information session be deemed necessary, the person in charge must organize individual visits or sessions with each of the bidders. Such visits or sessions will be arranged on an appointment basis and a schedule will be established to ensure that bidders do not meet. It is forbidden to organize site visits or information sessions with more than one bidder at a time.

4.4 Transmission of information

Bidders must present their questions in writing and send them by email to the City representative shown on the bid documents. The representative is the only person authorized at the City to answer bidders' questions. The questions and answers are sent to all bidders. However, should a question modify the requirements for the quotation, the answer is presented as an addendum.

It is forbidden for any member of the City administration or elected official to answer any question or request for details related to a bid request without referring said request to the City representative.

4.5 Bid-rigging statement

At the time a tender is submitted, the bidder must also submit a declaration (Bidder's Declaration – Appendix I) in which they affirm that they have not been found guilty, within the three (3) years preceding the call for tenders, of an offense against a law aimed at countering the rigging of calls for tenders

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

5.1 Conservation of information related to an influence communication

All members of the administration and elected officials must keep, as needed, in paper or electronic form, all documents, such as agendas, emails, phone messages, letters, meeting minutes, presentation documents, service offers, faxes, etc. related to any influence communication made to them by someone else, whether this communication does or does not comply with the *Lobbying Transparency and Ethics Act*, the *Code of Conduct for Lobbyists* or notices from the Lobbyists Commissioner.

5.2 Declaration regarding lobbying activities aimed at the City

At the time a tender is submitted, the bidder must also submit a declaration (Bidder's Declaration – Appendix I) in which they declare whether any lobbying activities have taken place in order to influence the securing of a contract on which they are bidding, and whether these lobbying activities took place in compliance with the *Lobbying Transparency and Ethics Act* (R.S.Q., T-11.01), with the *Code of conduct for Lobbyists*, and with notices issued by the Lobbyists Commissioner.

5.3 Exceptions to lobbying activities

Do not constitute lobbying activities:

- a) The fact that a bidder or a contracting party responds to a request from a member of the administration or one of his mandataries or an elected official, including representations made in the context of public calls for tenders issued under the city authority;
- b) Communications for the sole purpose of inquiring about the nature or scope of the rights or obligations of a client, a company or a group in application of the law.



6 Measures to prevent intimidation, influence peddling and corruption

6.1 Declaration of the absence of collusion and attempts at influence peddling aimed at a member of the administration or an elected official

Whenever a bidder submits a tender to the City, they must also submit a declaration (Bidder's Declaration – Appendix I) in which they declare that to their knowledge and after thorough verifications, neither they or any employee, manager, administrator or shareholder in their company attempted to communicate or communicated with a member of the City's administration, including the selection committee (where applicable), or an elected official, aimed at influencing them or obtaining information about the call for tenders.

The bidder must also declare that they prepared their tender without collusion and without communicating or establishing any agreement or arrangement with a competitor.

They must also declare that they do not have any agreement or arrangement with a competitor related to price, methods, factors or formulas for establishing prices, to the decision to submit or not submit a tender, to submit a tender that does not meet the call for tenders specifications, directly or indirectly, prior to the first of the following dates: time of the official opening of the tenders or the awarding of a contract.

They must also declare that they have not influenced or participated in the preparation of the tender documents with the aim of obtaining an advantage or limiting competition.

6.2 Benefits for a member of the administration or elected official

It is strictly forbidden for a bidder, a contracting party, a supplier or a buyer to make offers, donations, payments, gifts, remuneration, or any other advantage to a member of the administration or an elected official as part of a process of invitation to tender, request for quotation or award of contract.

A bidder, contracting party, supplier or purchaser is strictly prohibited from offering a gift, donation, payment or other benefit to a member of the administration or elected official.

7 Measures to prevent conflict of interest situations

7.1 Declaration of interest by municipal employees

Should an employee realize that they have a relationship that may be perceived as a conflict of interest with a bidder in the processes for calls for tender, negotiation, awarding of a contract by mutual agreement, or during the execution of a contract in which they are involved, they must inform the Director General immediately.

7.2 Declaration of interest by the bidder

Whenever a bidder submits a tender to the City, they must also submit a declaration (Bidder's Declaration – Appendix I) indicating whether they have, personally or through their administrators, shareholders or managers, a familial, financial or other relationship liable to be perceived as a conflict of interest, whether this relationship is directly or indirectly with a member of the City administration or elected official.

7.3 Failure to produce a declaration

The existence of a relationship between a bidder and member of the City administration or elected official does not automatically lead to the rejection of the tender. The City reserves the right to take any measure permitted by the Act if it deems that the conflict of interest is sufficiently serious for the contract to be awarded to another bidder.



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

8.1 Selection of invited bidders

The person responsible for the application of the present by-law, as well as each departmental manager, has the power to select any supplier invited to take part in a call for tenders process by invitation or a request in writing for a price of \$25,000 or more up to the maximum threshold.

8.2 Loyalty

A member of the administration or elected official must refrain from using their normal duties to favour the awarding of a contract to any one bidder in particular.

8.3 Splitting is prohibited

No project, requirement or order may be split up or apportioned in order to prefer a contracting party, be exempted from a control procedure or avoid an obligation stipulated in this by-law.

8.4 Delegating the power to nominate members of the selection committee

In order to keep the identities of the members of the selection committee confidential, the municipal council delegates to the Director General the power to nominate any member of the selection committee charged with examining the bids in the call for tenders process using criteria other than just the price, as prescribed by the Act.

8.5 Nomination of a Secretary

To assist or supervise, when required, the work of the members of the selection committee charged with examining the bids, the Assistant City Clerk or their delegate is nominated as Secretary of the selection committee. They assist, supervise and ensure the proper conduct of the committee's work, without participating in committee deliberations or a vote.

8.6 Solemn declaration by the members of the selection committee

Before they assume their duties, the members of the selection committee and the Committee Secretary must complete and submit a declaration (solemn) (Appendix II). Specifically, this declaration states that the committee members will examine the tenders presented by the bidders without bias, favour or consideration in accordance with the rules of ethics, and will carry out individual analyses of the quality of each of the compliant tenders received, prior to evaluating them as a committee.

Each member of the selection committee shall individually analyze the quality of each tender received that complies with the criteria listed in the weighting and evaluation chart in the call for tenders documents, without knowing the price, unless the weighting grid provided in the call for tenders documents includes the price within the evaluation criteria.

The members of the selection committee and the Committee Secretary must also solemnly declare that they will not, under any circumstances, disclose the mandate given to them by the City, that they will keep the discussions confidential, that they will take all appropriate precautions to avoid placing themselves in a potential conflict of interest situation, and that they have no direct or indirect interest in the call for tenders. If not, they formally promise to declare their interest and terminate their participation in the mandate.

During the call for tenders process, the identity of the members of the selection committee must be kept confidential by the administration and elected officials.



9 Measures to govern the making of any decisions that would allow a contract to be amended

9.1 Contract management

No matter the method of solicitation used, any amendment made to a contract can only be an ancillary item attached to said contract and must not change its nature.

9.2 Authorizing an amendment

For any request for a modification that is not ancillary to the initial contract, the person in charge of the project must submit a written request to the Director General, indicating the reasons justifying this amendment and the extra costs associated with it. If the Director General agrees, the latter will submit everything to Council for approval. An amendment to a contract is not granted until the resolution has been adopted.

9.3 Exception to the decisional procedure

In a case where a department manager or the Director General themselves approved the original contract under the powers given to them by the *By-law on the Delegation of Powers to Officers and Employees of the City of Beaconsfield* (BEAC-082), they may authorize an amendment to the contract for an amount that, in total, does not exceed the amounts set out in said by-law, as long as this decision does not circumvent the rules for awarding contracts. They must give reasons for the decision in writing.

10 Contracting rules for contracts worth between \$25,000 and the maximum threshold authorized under the law

Any contract with a value of between \$25,000 and the maximum threshold authorized by the law can be entered into using one of the following methods:

- a) Simplified public call for tenders
- b) Written request for a price
- c) Contract by mutual agreement

The weighting and evaluation system for tenders is not obligatory for professional services for the contracts listed above.

For contracts by mutual agreement, the measures set out in sections 11 and 12 of the present by-law must be respected.

11 Measures to promote rotation through future contracting parties when contracts by mutual agreement are awarded

11.1 Participation of different contracting parties

Whenever possible, the City must attempt to have participate the largest number of suppliers from among those able to meet its needs by favouring rotation through future contracting parties.

The City may proceed with a call for interest to find contracting parties likely to meet its needs.

However, the rotation must not be done at the expense of sound management of public spending. When rotation is not possible, the person in charge of the project must provide the reasons, in writing, and submit these written reasons to the Director General.

The contracting parties are selected by taking into account the following factors:

- The City prefers responsible purchasing
- Expertise in carrying out similar contracts
- Capacity and availability for carrying out the proposed contract
- Past experience by the City with this contracting party over the previous 2 years



12 Contracting rules for certain types of contracts

12.1 General

Nothing in this by-law shall limit the possibility for the City to use any competitive purchasing arrangements for awarding a contract, whether by means of a public call for tenders, by invitation or by requests for prices, even though it can legally award a contract by mutual agreement.

12.2 Decision to award a contract by mutual agreement

For a contract involving a value of between \$25,000 and the maximum threshold, the department concerned will carry out an in-depth, documented analysis, while at all times keeping the City's best interests in mind from an overall perspective. It will also take into consideration the very specific criteria below to guide it in choosing a solicitation and contracting method for the contract from among the following: a simplified public call for tenders, a request for writing in price or a contract by mutual agreement.

Below are some of the criteria that may be taken into consideration in a decision to award a contract by mutual agreement:

- a) Nature of the contract: contracts for which the City feels that a public call for tenders would not serve the public interest, such as a contract for legal services, a contract for financial or banking services, a contract for services concerning a publicity campaign or public relations, the purchase of IT domain products, etc;
- b) Amount of the overall expenditure, taking into account factors such as the guarantees offered, the quality and availability of products, professional expertise, training costs, etc.;
- c) Number of suppliers likely to meet the City's needs;
- d) Costs and timeframes associated with the process;
- e) Objectives not related to cost, such as favouring the local economy, sustainable development or businesses involved in the social economy;
- f) Continuity of services or purchasing ability for certain products;
- g) Internal level of expertise in the field targeted by the contract;
- h) Urgency of the situation that will not allow time for a call for tenders;
- i) Rarity or specific needs.

12.3 Quebec goods and suppliers

In accordance with section 124 of the *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*, this subsection will remain in effect for a period of three (3) years, until June 25, 2024.

Without limiting the principles and measures set out in this by-law relative to rotation of suppliers, and in line with sound management reasons, in the context of any contract award that involves an expenditure below the threshold for contracts subjected to a call for public tender, the City favours Quebec goods and services, as well as suppliers, insurers and contractors who have an establishment in Quebec.

In addition, in the context of a call for competition, the City may promote any Quebec goods and services and take into consideration the origin of the goods and said suppliers, in order to determine the best value for money.

An establishment in Quebec, within the meaning of this section, is any place where a supplier, an insurer or a contractor carries out their activities on a permanent basis, which is clearly identified in their name, and accessible during normal business hours.

Quebec goods and services are goods and services for which the majority of their design, manufacture, assembly and production is carried out mainly from an establishment located in Quebec.



13 Performance evaluation

The City may evaluate a contracting party whose performance is considered unsatisfactory.

The City may use this evaluation:

- a) to exclude the supplier from the rotation provided in section 11.1;
- b) to reject a supplier during the public call for tenders process, in accordance with the provisions in the *Cities and Towns Act*.

14 Sanctions

14.1 Sanctions for the manager or the employee

Any member of the administration must comply with the measures provided for in this by-law subject to the penalties provided for in the *Cities and Towns Act*.

14.2 Sanctions for the contracting party, mandatary, consultant, supplier or purchaser

In addition to any penalty, any contracting party, mandatary, consultant, supplier or purchaser who breaches this by-law or the contents of a declaration signed by them in applying the by-law, may have their contract unilaterally terminated.

14.3 Sanctions for bidders

A bidder who, directly or indirectly, breaches any of their obligations imposed under this by-law or the contents of a declaration signed by them in applying the by-law, may have their tender rejected if justified by the seriousness of the breach, have their previously awarded contract unilaterally terminated..

14.4 Criminal sanctions

No one may breach or allow someone else to breach a provision of this by-law.

Anyone who breaches or allows someone else to breach sections 4.1, 5.2, 6.1 or 7.2 of this by-law is committing an offence and will be liable to a fine of \$1,000 in the case of a physical person or \$2,000 in the case of a legal entity, no matter what other measure may be taken by the municipal council.

In the event of repeated breaches, the offender is liable to a fine of \$2,000 in the case of a physical person or \$4,000 in the case of a legal entity.

In all cases, costs are added to the fine.

Should the offence continue, this continuity constitutes, on a daily basis, a separate offence and the fine issued for this offence may be imposed for every day this offence persists.

15 Coming into force

This by-law shall come into force according to law.

MAYOR

CITY CLERK



Appendix 1 – Declaration by the bidder



Ville de Beaconsfield Déclaration du soumissionnaire

No de projet

Titre

Je, _____, (nom et
titre de la personne autorisée par le soumissionnaire)
signataire dûment mandaté pour la soumission déposée en vertu du présent appel d'offres, au nom de :

_____ (nom de l'entreprise soumissionnaire)

Ci-après appelé(e) le « soumissionnaire » déclare qu'à ma connaissance, le soumissionnaire :

I. n'a aucun lien familial, financier ou autre, susceptible de créer une apparence de conflit d'intérêts, directement ou indirectement, avec un ou plusieurs membres de l'administration municipale.

Dans le cas contraire, il déclare avoir les liens suivants (précisez) :

II. n'a pas influencé ni autrement participé à l'élaboration du devis ou du cahier de charges dans le but d'en retirer un avantage ou de limiter la concurrence;

III. durant le processus d'appel d'offres, n'a pas tenté de communiquer avec les membres de l'administration impliqués dans ce processus, dont les membres d'un comité de sélection, en vue de les influencer dans leur jugement, appréciation, recommandation pour l'adjudication du contrat ayant fait l'objet du processus;

IV. rencontre toutes les exigences prévues dans la Loi et dans la Politique de gestion contractuelle de la Ville de Beaconsfield;

V. a présenté une soumission établie sans collusion et sans communication, entente ou arrangement avec un concurrent ou un tiers relativement aux prix, aux méthodes, aux facteurs ou aux formules pour établir les prix, ni quant à la décision de présenter ou non une soumission qui ne répond pas aux exigences de l'appel d'offres;

VI. n'a pas été condamné, dans les 3 années précédant l'appel d'offres, pour une infraction à une loi visant à contrer le trucage des offres;

VII. s'il s'est adonné à des communications d'influence pour l'obtention d'un contrat, a effectué celles-ci conformément à la Loi sur la transparence et l'éthique en matière de lobbyisme (L.R.Q. T-11.011), au Code de déontologie des lobbyistes et aux avis du Commissaire au lobbyisme.

Je reconnais :

1. avoir lu et compris le contenu de la présente déclaration;
2. que la soumission ci-jointe sera disqualifiée si ma déclaration est absente, fautive ou incomplète;
3. que, malgré la présente déclaration, dans l'éventualité où l'administration découvre qu'il y a eu collusion dans le cadre de la préparation de ma soumission ou que j'ai été déclaré(e) coupable vertu de la Loi fédérale sur la concurrence, le contrat qui pourrait avoir été accordé au soumissionnaire dans l'ignorance de ce fait sera résilié et des poursuites en dommages-intérêts pourront être intentées contre moi et toute autre partie à la collusion.

Et j'ai signé,

Signature

Date



Appendix 2 – Solemn commitment by of the members of the selection committee



**ENGAGEMENT SOLENNEL DES MEMBRES
DU COMITÉ DE SÉLECTION**

Mandat	
Titre	

Je, soussigné(e), m'engage en ma qualité de membre du présent comité de sélection à agir fidèlement et conformément au mandat qui m'a été confié.

Je m'engage à assurer la confidentialité de toute information relative aux soumissions reçues, aux discussions en comité et aux résultats de l'évaluation. Ces renseignements doivent demeurer à l'insu des prestataires de services, des journalistes, ainsi que de mon supérieur et de mes collègues de travail (à l'exception bien sûr du secrétaire et des membres du comité de sélection).

Nonobstant la date de signature du présent document, cet engagement entre en vigueur au moment de mon acceptation à siéger comme membre du comité de sélection et reste en vigueur indéfiniment après la séance du comité.

Je certifie qu'aucun prestataires de services dans le cadre du présent mandat n'a communiqué avec moi pour:

- tenter de connaître le nom des membres du comité de sélection;
- tenter d'influencer mon jugement sur les soumissions reçues;
- me faire une offre ou un don, me verser une rémunération ou me procurer un avantage quelconque en relation avec le présent mandat.

Advenant le cas où j'apprendrais qu'une personne associée, actionnaire ou membre du conseil d'administration de l'un des prestataires de services m'est apparentée, j'en avertirai sans délai le secrétaire du comité de sélection. Je certifie ne pas être concurrence avec aucun des prestataires de services évalués. Je certifie aussi ne pas être en situation telle que mon intérêt personnel pourrait l'emporter sur l'intérêt public.

Enfin, je confirme n'avoir été l'objet d'aucune représentation ou pression de la part d'un ou de plusieurs prestataires de services évalués.

Nom (en lettres moulées) du membre du comité de sélection
Signature du membre du comité de sélection
Date (année-mois-jour)