

BY-LAW NUMBER 2021-032

AMENDING THE CONTRACTUAL MANAGEMENT BY-LAW 2018-022

WHEREAS the By-law number 2018-022 on Contractual Management has been adopted by the Municipality of Kazabazua on January 22, 2019 under section 938.1.2 of the Quebec Municipal Code ('C.M.');

WHEREAS the Act establishing a new development regime on lake and stream flood zones, temporarily granting municipalities powers to meet certain needs and amending various provisions (L.Q. 2021, Chapter 7) was sanctioned on March 25, 2021;

WHEREAS in the context of the COVID-19 pandemic, section 124 of the Act provides that for a period of three (3) years, effective June 25, 2021, municipalities will have to provide measures to favor Quebec businesses for any contract that involves an expenditure below the threshold for the expenditure of a contract that can only be awarded after a public tender;

WHEREAS a notice of motion was issued and a draft By-law was tabled and presented at the May 4th, 2021 meeting.

IT IS PROPOSED BY: SYLVAIN LA FRANCE

SECONDED BY : CRAIG GABIE

AND UNANIMOUSLY RESOLVED THAT THIS BY-LAW BE ADOPTED AND THAT IT BE ORDERED AND DECREET AS FOLLOWS:

CHAPTER I

DECLARATORY AND INTERPRETATIVE PROVISIONS

SECTION I

DECLARATORY PROVISIONS

1. Purpose of the Regulation

This Regulation aims to:

- (a) to provide for the awarding and management of contracts awarded by the Municipality, in accordance with article 938.1.2 C.M.
- (b) provide for contracting rules that include an expenditure of not less than \$ 25,000 but less than the expenditure threshold of a contract that can be awarded only after a public bid solicitation under Article 935 CM.

2. Scope

This Regulation applies to any contract entered into by the Municipality, including a contract that is not referred to in any of the paragraphs of the first paragraph of subsection 9 (1) or in sections 938.0.1 and 938.0. 2 CM.

This by-law applies regardless of the authority that grants the contract, be it the council or any other person to whom the council has delegated the spending power and enter into contracts on behalf of the municipality.

2021-06-113
Addition

Section 2 of this By-law is effective from June 25, 2021, or the day this By-law comes into effect, according to the latest of these two dates, and remains so until June 25, 2024.

SECTION II

INTERPRETATIVE PROVISIONS

3. Interpretation of text

This Regulation must be interpreted in accordance with the principles of the Interpretation Act (RLRQ, c. I-16).

It shall not be construed as derogating from the mandatory provisions of the laws governing municipal contracts, unless such laws expressly permit derogation by this by-law including, for example, some of the measures provided for in Chapter II of the this regulation.

4. Other bodies or agencies

The Municipality recognizes the importance, the role and the powers granted to other bodies that may investigate and act on the objects targeted by certain measures provided for in this by-law. This includes measures to prevent acts of intimidation, trading in influence, bribery, bid-rigging, and those aimed at ensuring compliance with the Transparency and Ethics Act. Lobbyists and the Lobbyists' Code of Conduct adopted under this Act.

5. Specific rules of interpretation

This Regulation shall not be interpreted as:

- a) a restrictive or literal manner;
- b) as restricting the possibility for the Municipality to contract by mutual agreement, in cases where the law allows it to do so.

The measures provided for in this Regulation must be interpreted

- a) in accordance with the principles set out in the preamble to the Act, which primarily recognize that municipalities are local governments and thereby increase their autonomy and powers (2017, c.13) (Bill 122), recognizing in particular municipalities as local governments and elected officials, the legitimacy necessary to govern according to their attributions;
- b) in order to comply with the principle of proportionality and thereby ensure that the steps related to the measures imposed are proportionate to the nature and amount of the contract expenditure to be incurred, having regard to the costs, the time required and the size of the municipality.

6. Terminology

Unless the context otherwise indicates, words and expressions used in these Regulations have the following meanings:

« *Call for tenders* » : Invitation to tender or public invitation required by articles 935 and following C.M. or a regulation adopted under this law. Are excluded from the expression "call for tenders", price requests that are formulated when no call for tenders is required by law or by this Regulation.

« *Tenderer* » : Anyone who submits an offer during a bidding process

CHAPTER II

RULES OF CONTRACT AWARD AND ROTATION

7. General

The Municipality respects the contracting rules provided for in the laws that govern it, including the C.M. More specifically:

- a) it proceeds by invitation to tender where the law or a regulation made under an Act imposes such a call for tenders, unless there is a specific provision to the contrary provided for in this Regulation;
- b) it proceeds by public call for tenders in all cases where a public call for tenders is imposed by law or by a regulation adopted under the law;

- c) it may proceed by mutual agreement in cases where the law or this Regulation permits it to do so.

Nothing in this by-law may have the effect of limiting the possibility for the Municipality to use any method of call for competition for the award of a contract, whether by public call for tenders, by invitation or by request for price, even if it can legally proceed by mutual agreement.

8. Contracts that can be concluded by mutual agreement

Subject to Article 11, any agreement referred to in any of paragraphs of the first paragraph of Article 935 CM, involving an expenditure of at least \$ 25 000, but less than the threshold of the expense of a contract can only be awarded after a public bid solicitation under Article 935 CM, may be concluded by mutual agreement by the Municipality.

9. Rotation - Principles

The Municipality favors, if possible, the rotation among the potential suppliers, with regard to the contracts that can be passed by agreement under Article 8. The Municipality, in the decision making in this regard, considers in particular the following principles:

- a) the degree of expertise required;
- b) the quality of the work, services or materials already delivered or delivered to the Municipality;
- c) the delays inherent in the execution of the work, the supply of material or materials or the provision of services;
- d) the quality of the goods, services or works sought;
- e) the delivery terms;
- f) maintenance services;
- g) the required experience and financial capacity;
- h) price competitiveness, taking into account all market conditions;
- i) the fact that the supplier has an establishment on the territory of the Municipality;
- j) any other criteria directly related to the market.

10. Rotation - Measures

For the purpose of ensuring the implementation of the rotation provided for in section 9, the Municipality shall apply, to the extent possible and in the absence of special circumstances, the following measures:

- a) potential suppliers are identified before awarding the contract. If the territory of the Municipality has more than one supplier, this identification may be limited to the latter territory or, as the case may be, the territory of the MRC or any other geographic region that is deemed relevant given the nature of the contract to intervene;
- b) once the suppliers have been identified and considering the principles set out in section 9, the rotation between them must be encouraged, unless there are grounds for sound administration;
- c) the Municipality may make an appeal for interest in order to find out which suppliers may meet its needs;
- d) unless there are special circumstances, the person in charge of managing the contract completes, to the extent possible, the analysis form found in Appendix 4;
- e) for the categories of contracts it determines, for the purpose of identifying potential suppliers, the Municipality may also establish a list of suppliers. The rotation among the suppliers appearing on this list, if any, shall be favored, subject to the provisions of paragraph (b) of this Article.

2021-06-113
Addition

10.1 Without limiting the principles and measures set out in this By-law for supplier rotation, in the context of the awarding of any contract that involves an expenditure below the threshold of the contract expenditure that can only be awarded after a request for public tenders, the municipality must favor Quebec goods and services as well as suppliers, insurers and contractors with a facility in Quebec.

An establishment in Quebec, within the meaning of this section, is any place where a supplier, insurer or contractor operates permanently that is clearly identified in its name and accessible during normal business hours.

Quebec goods and services are goods and services, the majority of which are designed, manufactured, assembled or realized, mostly from an establishment located in Quebec.

The Municipality, in making a decision on the awarding of a contract covered by this article, considers in particular the principles and measures set out in terms of the rotation of potential suppliers and more specifically detailed to the articles 10 of the By-law.

CHAPTER III

MEASURES

SECTION I

CONTRACTS BY AGREEMENT

11. General

For certain contracts, the Municipality is not subject to any special competitive bidding procedure (public call for tenders or invitation). This bylaw may not have the effect of restricting the possibility for the Municipality to proceed by mutual agreement for these contracts. These include, in particular, contracts:

- which, by their nature, are not subject to any tendering process (contracts other than insurance contracts for the performance of works, supply and services);
- expressly exempted from the tendering process (in particular those listed in Article 938 CM and the professional services contracts necessary for an appeal to a court, body or person exercising judicial or judicial functions ;
- insurance, for the performance of works, supplies or services (including professional services) that involve an expenditure of less than \$ 25,000.

12. Measures

When the Municipality chooses to grant a private contract, the following measures apply, unless these measures are incompatible with the nature of the contract:

- a) Lobbying
 - Measures provided for in Articles 16 (Duty to inform elected officials and employees) and 17 (Training);
- b) Intimidation, influence peddling and corruption
 - Measure provided for in Article 19 (Denunciation);
- c) Conflict of interest
 - Measure provided for in Article 21 (Denunciation);
- d) Amendment of a contract
 - Measure provided for in Article 27 (Amendment of a contract).

13. Information Document

The Municipality must publish, on its website, the contractual management information document attached to Annex 1, so as to inform the public and potential contractors of the measures it has taken under this by-law.

SECTION II

BID-RIGGING

14. Sanction if collusion

Must be inserted in the tender documents, a provision providing for the possibility for the Municipality to reject a bid if it is clearly established that there has been collusion with any person in contravention of any law aimed at combating bid rigging.

15. Declaration

All tenderers must attach to their tender, or at the latest before the award of the contract, a statement affirming solemnly that its bid has been prepared and submitted without collusion, communication, agreement or arrangement with any person in contravention any law to combat bid-rigging. This declaration must be made on the form attached as Annex 2.

SECTION III

LOBBYING

16. Duty to inform elected officials and employees

Any member of the council or any officer or employee shall remind all persons who take the initiative of contacting him or her to obtain a contract that the Lobbying Transparency and Ethics Act is in place, when he believes that there is a contravention of this law.

17. Training

The Municipality favors the participation of council members and public servants and employees in training designed to provide them with information on applicable laws and regulations relating to lobbying.

18. Declaration

Tenderers must attach to their tender or, at the latest before the award of the contract, a statement affirming solemnly that neither it nor any of its employees, agents or employees engaged in a communication of influence for the purpose of obtaining a contract in contravention of the Lobbying Transparency and Ethics Act or, if such disclosure of influence has occurred, that it has been entered in the Lobbyists' Register when such registration is required by law. This declaration must be made on the form attached as Annex 2.

SECTION IV

INTIMIDATION, INFLUENCE TRAFFIC AND CORRUPTION

19. Denunciation

All member of the council, any public servant or employee, as well as any other person working for the Municipality must denounce, as soon as possible, any intimidation, influence peddling or corruption which he has witnessed in the framework of his functions. This measure should not be interpreted as limiting the right of the person concerned to lodge a complaint with a police service or other public authority.

A member of the council makes this denunciation to the director general; the director general to the mayor; other public servants and employees as well as any person working for the Municipality, the Director General. When the denunciation directly or indirectly involves the mayor or the director general, the denunciation is made to the one who is not involved. If both are involved, the information is reported to the acting mayor or other non-involved municipal council member. The person who receives the information must treat it with diligence and take the appropriate measures according to the nature of the situation complained of.

20. Declaration

All tenderer must enclose with his tender, or at the latest before the award of the contract, a declaration solemnly affirming that neither he nor any of his collaborators, representatives or employees has engaged in the call for offers, acts of intimidation, trading in influence or corruption, against a member of the council, an officer or employee or any other person working for the Municipality. This declaration must be made on the form attached as Annex 2.

SECTION V

CONFLICTS OF INTEREST

21. Denunciation

All member of the council, any officer or employee, as well as any other person working for the Municipality, involved in the preparation of contractual documents or in the awarding of contracts, must denounce, as soon as possible, the existence of any interest pecuniary in a legal person, company or company likely to conclude a contract with the Municipality.

A member of the council makes this denunciation to the director general; the director general to the mayor; other public servants and employees as well as any other person working for the Municipality, to the Director General. When the denunciation directly or indirectly involves the mayor or the director general, the denunciation is made to the one who is not involved. If both are involved, the information is reported to the acting mayor or other non-involved municipal council member. The person who receives the information must treat it with diligence and take the appropriate measures according to the nature of the situation complained of.

22. Declaration

When the Municipality uses a system of weighting and evaluation of the offers, any member of the selection committee must solemnly declare in writing, before starting the evaluation of the tenders, that he has no particular pecuniary interest, direct or indirect, in respect of the contract being evaluated. He must also undertake not to disclose the mandate entrusted to him by the Municipality, and not to use, communicate, attempt to use or communicate, both during his term of office and after this one., information obtained in the course of or in connection with the performance of his duties as a member of the selection committee. This declaration must be made on the form attached in Annex 3.

23. Minimal pecuniary interest

The minimal pecuniary interest is not affected by the measures described in Articles 21 and 22.

SECTION VI

IMPARTIALITY AND OBJECTIVITY OF THE TENDERING PROCESS

24. Responsible for the call for tenders

All tender identifies a person responsible and provides that any potential bidder or any bidder must address solely to the person responsible for any information or clarification regarding the tender.

25. Questions from tenderers

The person responsible of the call for tenders compiles the questions posed by each bidder during the bidding process and issues, if deemed necessary, an addendum, so that all bidders can obtain the bids. answers to questions asked by others.

The person responsible of the call for tenders has full discretion to judge the relevance of the questions asked and those that require a response and may consolidate and reword certain questions for the purpose of forwarding responses to bidders.

26. Denunciation

All member of the council, any officer or employee, as well as any other person working for the municipality, must, as soon as he is informed, denounce the existence of any situation, other than a conflict of interest, likely to compromise the impartiality and objectivity of the tendering process and resulting contract management.

A member of the council makes this denunciation to the director general; the director general to the mayor; other officers and employees, as well as any other person working for the Municipality, to the Director General. When the denunciation directly or indirectly involves the mayor or the director general, the denunciation is made to the one who is not involved. If both are involved, the information is reported to the acting mayor or other non-involved municipal council member. The person who receives the information must treat it with diligence and take the appropriate measures according to the nature of the situation complained of.

SECTION VII

AMENDMENT OF A CONTRACT

27. Amendment of a contract

Any change in a contract that has the effect of increasing the price must be justified by the person responsible for the management of the contract, considering the applicable rules to authorize such a modification.

The Municipality may not modify a contract awarded following a call for tenders, except in the case where the modification constitutes an accessory to it and does not change its nature.

28. Site meetings

When justified by the nature of the work, the Municipality favors regular site meetings to monitor the execution of the contract.

CHAPITRE IV

ADMINISTRATIVE AND FINAL PROVISIONS

29. Application of the regulations

The application of this regulation is the responsibility of the Director General of the Municipality. The latter is responsible for preparing the report to be submitted annually to the council concerning the application of this by-law, in accordance with article 938.1.2 C.M.

30. Repeal of the Contract Management Policy

This Regulation replaces and repeals the Contract Management Policy adopted by Council on January 11, 2011 and deemed, since January 1, 2018, a Regulation on Contract Management under section 278 of the Act, which is intended principally to recognize that municipalities are municipalities. governments and to increase their autonomy and powers in this respect (2017, c.13).

31. Entry into force and publication

This by-law comes into force in accordance with the law and is published on the website of the Municipality. In addition, a copy of these rules is sent to the MAMH.

Adopted at Kazabazua, this 22 of January 2019

Robert Bergeron
Mayor



Pierre Vaillancourt, DMA
Director general and secretary-treasurer

Notice of motion :	May 4 th , 2021
Presentation of the project by-law :	May 4 th , 2021
Adoption of the by-law :	June 1 st , 2021
Promulgation notice:	June 2 nd , 2021
Transmission to MAMH :	June 2 nd , 2021
Adopting resolution:	2021-06-113

ANNEX 1

INFORMATION DOCUMENT (Contract management)

(Article 13 of by-law number 2018-022 on contract management)

The Municipality has adopted a By-law on Contract Management providing for measures to:

- promote compliance with applicable laws designed to combat bid-rigging;
- ensure compliance with the Lobbying Transparency and Ethics Act and the Lobbyists' Code of Conduct adopted under this Act;
- prevent acts of intimidation, influence peddling or corruption;
- prevent situations of conflict of interest;
- prevent any other situation that could compromise the impartiality and objectivity of the bid solicitation process and resulting contract management;
- supervise the making of any decision that has the effect of authorizing the amendment of a contract;

- promote, to the extent possible and in accordance with the criteria and principles set out in the by-law, the rotation of potential contractors with respect to contracts involving an expense of \$ 25,000 or more, but less than the threshold of the expenditure of a contract that can only be awarded after a public bid solicitation under Article 935 CM

This regulation can be consulted by clicking on the following link: **Kazabazua.ca**

Anyone intending to enter into a contract with the Municipality is invited to read the Regulation respecting contract management and to inquire of the Director General if he has any questions in this regard.

In addition, any person who has information regarding the non-respect of any of the measures contained therein is invited to inform the Director General or the Mayor. The latter will, if necessary, take appropriate measures or refer the complaint and the documentation to the competent authorities.

ANNEX 2

**DECLARATION OF THE BIDDER
(Contractual management)**

I, the undersigned, tenderer or representative of the bidder _____,
solemnly declare that to the best of my knowledge:

- a) this bid has been prepared and filed without collusion, communication, agreement or arrangement with any other person in contravention of any law designed to combat bid-rigging;
- b) neither I nor any of the Tenderer's collaborators, representatives or employees engage in any communication of influence for the purposes of obtaining the contract, or, if such communication of influence has taken place, I declare that this communication has the subject of an entry in the Lobbyists' Register, as required by law, if applicable;
- c) neither I nor any of the Bidder's employees, representatives or employees engage in acts of intimidation, influence peddling or bribery against any member of the Council, any employee or any other person working for the Municipality in connection with this bid solicitation.

AND I SIGNED :

Solemnly affirmed before me at _____

this _____ day of _____ 20

Commissioner of Oaths for Quebec

ANNEX 3

DECLARATION OF THE MEMBER OF A SELECTION COMMITTEE

I, the undersigned, a member of the Selection Committee in relation to (identify contract), solemnly declare that I have no particular pecuniary interest, direct or indirect, in respect of this Contract.

I undertake not to disclose the mandate entrusted to me by the Municipality, nor to use, communicate, attempt to use or communicate, both during my term of office and after this one, information obtained in the course of or in connection with the performance of my duties as a member of the selection committee.

AND I SIGNED :

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Solemnly affirmed before me at █

this █ day of █ 20

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Commissioner of Oaths for Quebec