PROVINCE OF QUEBEC
REGIONAL COUNTY MUNICIPALITY OF PONTIAC

BY-LAW NO. 254-2019 REGARDING CONTRACT MANAGEMENT

WHEREAS a Contract Management Policy was adopted by the Pontiac RCM on March 22, 2011 (Resolution C.M. 2011-03-12), in accordance with Article 938.1.2 of the Municipal Code of Quebec (hereinafter called "M.C.");

WHEREAS Article 938.1.2 M.C. was replaced on January 1, 2018, obliging municipalities, as of this date, to adopt a by-law regarding contract management;

WHEREAS the RCM wishes, as permitted by Article 938.1.2 M.C., to provide contracting rules that involve an expenditure of at least $ 25,000 and below the expenditure threshold of a contract that can be awarded only after a public bid in accordance with Article 935 M.C.;

WHEREAS consequently, Article 936 M.C. no longer applies to these contracts as from the entry into force of this by-law.

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

WHEREAS a notice of motion has been given on March 20th 2019 and a draft by-law was presented at the meeting of April 17th, 2019;

WHEREAS the Director General states that the purpose of this by-law is to provide for contract management measures for any contract to be concluded by the RCM, including certain contracting rules for contracts involving an expense of at least $ 25,000 and below the threshold requiring an invitation for tender, this threshold being, since April 19, 2018, $ 101,100, and may be amended following the adoption by the Minister of a regulation to that effect;

CONSEQUENTLY, IT IS MOVED BY Councillor Mr. Carl Mayer

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

CHAPTER 1

DECLARATORY AND INTERPRETATIVE PROVISIONS

SECTION 1

DECLARATORY PROVISIONS

1. Purpose of this by-law

The present by-law's objective is to:

a) provide for measures for the awarding and management of contracts awarded by the RCM, in accordance with Article 938.1.2 M.C.;

b) provide for contracting rules that involve an expenditure of at least $25,000 and that are below the threshold requiring a public invitation for tender, according to Article 935 C.M.;

2. Scope of application

This by-law applies to any contract concluded by the RCM, including a contract that is not referred to in any of the paragraphs of the first section of paragraph 1 of Article 935 or in Articles 930.0.1 and 938.0.2 M.C.

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

This by-law does not apply to an employment contract.

SECTION II

INTERPRETATIVE PROVISIONS

3. Interpretation of the text

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

It must not be interpreted as allowing derogations from the mandatory provisions of the laws governing municipal contracts, unless such laws expressly permit derogation by the present by-law, including, for example, some of the measures provided for in Chapter II of this by-law.

4. Other bodies or organizations

The RCM recognizes the importance, the role and the powers granted to the other bodies that may investigate and act with regard to the objects targeted by certain measures provided for in this by-law. This includes measures to prevent acts of intimidation, corruption, bribery, bid-

rigging, and those aimed at ensuring compliance with the *Transparency and Ethics Act for Lobbyists and the Lobbyists' Code of Conduct* adopted under this Act.

5. Special rules of interpretation

The present by-law must not be interpreted:

a) in a restrictive or literal manner;

b) as restricting the possibility for the RCM to contract by mutual agreement, in cases where the law allows it to do so;

The measures provided for in this by-law 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 municipalities as being governments of proximity and to the elected officials, the legitimacy necessary to govern according to their attributions;

b) so as to respect the principle of proportionality and thus ensure that the steps related to the measures imposed are proportionate to the nature and amount of the contract expenditure to be incurred, considering the costs, the time required and the size of the RCM.

6. Terminology

Unless the context indicates otherwise, words and expressions used in this by-law have the following meanings:

"Call for tenders":	Invitation to tender or public invitation required by Articles 935 and the following, M.C., or the by-law adopted pursuant of this law. Are excluded from the expression "call for tenders", the price requests that are formulated where no call for tenders is required by law or by this by-law.
"Council":	For the purposes of this by-law, the term council refers to the council of Wardens
"Bidder":	Anyone who submits an offer during a process of a call for tenders.

CHAPTER II

RULES FOR AWARDING CONTRACT AND ROTATION

7. Generalities

The RCM respects the contracting rules provided for in the laws that govern it, including the M.C., in particular:

a) it shall proceed by invitation to tender when the law of by-law adopted pursuant to a law imposes such a call for tenders, unless a particular provision stipulated otherwise, that is provided for in this by-law;

b) it shall proceed by public invitation to tender in all cases where a public call for tenders is required by law of by the by-law adopted pursuant to the law;

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

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

8. <u>Contracts that may be concluded by mutual agreement</u>

Subject to Article 11, any contract involving an expenditure of at least $ 25,000, but less than the threshold of the expenditure of a contract which can be adjudicated only after a public call for tenders under Article 935 M.C., may be concluded by mutual agreement by the RCM;

Without limiting the generality of the preceding paragraph, any contract of supply, construction, services or professional services involving an expenditure of at least $ 25,000 but less than the threshold of the expenditure of a contract which can only be awarded after a request for tenders, can be concluded by mutual agreement by the RCM.

9. <u>Rotation – Principles</u>

The RCM shall encourage, if possible, rotation among potential suppliers, with respect to contracts that may be entered into by mutual agreement under Article 8. The RCM, in making the decision in this regard, considers the following principles:

a) the degree of expertise needed;

b) the quality of the work, services or materials already delivered to the RCM;

c) the delays inherent to the execution of the work, the supply of materials or the provision of services;

d) the quality of the goods, services or works sought;

e) the delivery terms;

f) the maintenance services;

g) the required experience and financial capacity;

h) the price competitiveness, taking into account all market conditions;

i) the fact that the supplier has an establishment on the territory of the RCM;

j) any other criteria directly related to the market.

10. <u>Rotation – Measures</u>

For the purpose of ensuring the implementation of the rotation provided for in Article 9, the RCM shall apply, to the extent possible and subject to special circumstances, the following measures:

a) potential suppliers are identified before awarding the contact. If the territory of the RCM has more than one supplier, this identification may be limited to its territory or, as the case maybe, the territory of the RCM or any other geographic region that will be considered relevant given the nature of the contract to intervene;

b) once the suppliers have been identified and the principles set out in Article 9 are considered, the rotation between them must be encouraged, unless there are grounds pertaining to sound administration;

c) the RCM may proceed with a call for interest in order to identify suppliers likely to 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 Annex 4;

CHAPTER III

MEASURES

SECTION I

MUTUEL AGREEMENT CONTACTS

11. Generalities

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

- which, by their nature, are not subject to any tendering process (contracts other than insurance contracts, supply of material or materials, services and execution of works);

- expressly exempted from the tendering process (in particular, those listed in Article 938 M.C. and the professional services contracts necessary for an appeal to a court, body or person exercising adjudicative or judicial functions;

- insurance, for the performance of work, for the supply of material or materials or services (including professional services) that involve an expenditure of less than $ 25,000.

12. Measures

When the RCM chooses to grant, by mutual agreement, one or the other of the contracts mentioned in Article 11, the following measures apply, unless these measures are not compatible with the nature of the contract:

a) Lobbying

- Measures provided for in Articles 17 (duty to inform elected officials and employees) and 18 (training);

b) Intimidation, bribery or corruption

- Measures provided for in Articles 20 (denunciation);

c) Conflict of interest

- Measures provided for in Articles 22 (denunciation);

d) Modification of a contract

- Measures provided for in Articles 28 (modification of a contract).

CONTRACTS REQUIRING AN ASSESSMENT ACCORDING TO A WEIGHTING GRID

13. The board delegates to the Director General the power to form any selection committee to ensure compliance with all the inherent obligations.

The board delegates to the Director General or to the officer appointed by the Director General the power to establish the weighting criteria.

14. Information document

The RCM must publish, on its Website, the contract management information document attached to Annex 1, in order to inform the public and potential contractors of the measures it has taken under this by-law.

SECTION II

BID RIGGING

15. Sanction if collusion

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

16. Declaration

All bidders must enclose with their bid, or at the latest before the awarding of the contract, a declaration solemnly affirming that their bid has been prepared and filed without any collusion, communication, agreement or arrangement with any person in violation of any law designed to combat bid-rigging. This declaration must be made on the form attached as Annex 2.

SECTION III

LOBBYING

17. Duty to inform elected officials and employees

Any member of the council or any officer or employee shall remind any person who takes the initiative of contracting her / him to obtain a contract, the existence of the *Lobbying Transparency and Ethics Act*, when she / he believed that there is a violation of this law.

18. Training

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

19. Declaration

Any bidder must enclose with her / his tender or, at the latest before the awarding of the contract, a declaration solemnly affirming that neither she / he nor any of her / his collaborators, representatives or employees has engaged in communication of influence for the purposes of the contract, in violation of the *Lobbying Transparency and Ethics Acts* or, if such disclosure of influence has taken place, that it was made after any registration has been made in the Lobbyists Registry when it is required by law. This declaration must be made on the form attached as Annex 2.

SECTION IV

INTIMIDATION, BRIBERY OR CORRUPTION

20. Denunciation

Any member of the council, any public servant or employee, as well as any other person working for the RCM must denounce, as soon as possible, any attempt of intimidation, bribery or corruption which she / he has witnessed within the framework of her / 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 council makes this denunciation to the Director General; the Director General to the Warden; other public servants and employees as well as any person working for the RCM, the Director General. When the denunciation directly or indirectly involves the Warden or the Director General, the denunciation is made to the one who is not involved. The Director General of the Warden must deal with the denunciation diligently and take the appropriate measures depending on the nature of the situation complained of, including reporting the situation to any other competent authority.

21. Declaration

Each bidder must enclose with her / his tender, or at the latest before the awarding of the contact, a declaration solemnly affirming that neither she / he nor any of her / his collaborators, representatives or employees has engaged, in the process of the call for offers, in acts of intimidation, bribery or corruption, against a member of the council, a public servant, officer or employee or any other person working for the RCM. This declaration must be made on the form attached as Annex 2.

SECTION V

CONFLICT OF INTEREST

22. Denunciation

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

A member of the council makes this denunciation to the Director General; the Director General to the Warden; other public servants and employees and any other person working for the RCM, to the Director General. When the denunciation directly or indirectly involved the Warden of 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 Warden 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.

23. Declaration

When the RCM uses a system of weighing and evaluation of the tenders, all members of the selection committee must solemnly declare in writing, before starting the evaluation of the tenders, that she / he has no particular pecuniary interest, direct or indirect, in respect of the contract being evaluated. She / he must also undertake to not divulge the mandate entrusted to her / him by the RCM, as well as to not use, communicate, attempt to use or communicate, both during her / his term of office and afterwards, information obtained in the course of or in connection with the performance of her / his duties as a member of the selection committee. This declaration must be made on the form attached as Annex 3.

24. Minimal pecuniary interest

The minimal pecuniary interest is not affected by the measures described in Articles 22 and 23.

SECTION VI

IMPARTIALITY AND OBJECTIVITY OF THE CALL FOR THENDERS PROCESS

25. Person responsible for the call for tenders

Any call for tenders identifies a person responsible and provides that any potential bidder or bidder must contact that sole person for any information or clarification regarding the call for tenders.

26. Questions from bidders

The person responsible for the call for tenders compiles the questions posed by each bidder during the bidding process and, if she / he deems it necessary, issues and addendum, so that all bidders can obtain the answers to questions asked by others.

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

27. Denunciation

Any member of the council, any public servant or employee, as well as any other person working for the RCM, must, as soon as she / he is informed, denounce the existence of any situation, other than a conflict of interest, likely to compromise the impartiality and objectivity of the bidding process and resulting contract management.

A member of council makes this denunciation to the Director General; the Director General to the Warden; other public servants and employees, as well as any other person working for the RCM, to the Director General. When the denunciation directly or indirectly involves the Warden 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 warden 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

MODIFICATION OF A CONTRACT

28. Modification of a contract

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

The RCM 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.

CHAPTER IV

ADMINISTRATIVE AND FINAL DISPOSITIONS

29. Application of the by-law

The application of this by-law is the responsibility of the Director General of the RCM. 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 M.C.

30. Repeal of the contract management policy

This by-law replaces and repeals the Contract Management Policy adopted by Council on March 22nd, 2011 (Resolution C.M. 2011-03-12) and deemed, since January 1, 2018, a By-law regarding Contract Management pursuant to Article 278 *of the Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers* (2017, c. 13).

31. Coming into force and publication

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

Adopted in Campbell's Bay this May 15th, 2019

Jane Toller Warden	Bernard Roy Director General and Secretary-Treasurer

Notice of motion:	March 20th, 2019
Presentation of draft by-law:	April 17th, 2019
Adoption of by-law:	May 15th, 2019
Notice of publication:	May 30th, 2019
Date of coming into force:	May 30th, 2019
Transmission to MAMH:	May 30th, 2019

ANNEX 1

INFORMATION DOCUMENTS
(Contract Management)
Article 14 of By-law no. 254-2019 on Contract Management

The RCM has adopted a By-law regarding 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 Lobbyist' Code of Conduct* adopted under this Act;
- prevent acts of intimidation, bribery or corruption;
- prevent situations of conflict of interest;
- prevent any other situation that could compromise the impartiality and objectivity of the call for tenders and the management of the resulting contract;
- regulate the making of any decision that has the effect of authorizing the modification of a contract;
- encourage, as much as 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 below the threshold for a public call for tenders, in accordance with the Article 935 M.C.

This By-law may be consulted by clicking on the following link: http://www.mrcpontiac.qc.ca/la-mrc/gestion-contractuelle/

Anyone intending to deal with the RCM is invited to read the By-law Regarding Contract Management and to verify with the Director General if there are any questions in this regard.

Furthermore, 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 Warden. 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
(Contract Management)

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

a) this bid has been prepared and filed without any collusion, communication, understanding or arrangement with any other person in violation of any law designed to combat bid-rigging;

b) neither I nor any of the bidder's collaborators, representatives or employees have given us any evidence of influence for the purposes of obtaining the contract, or, if such communication of influence has taken place, I declare that this communication was made after any registration required by law in the Lobbyist's register had been made;

c) neither I nor any of the bidder's employees, representatives or employees engage in acts of intimidation, bribery or corruption against any member of Council, any officer or employee, or any other person working for the RCM in connection with this call for tenders.

AND I SIGNED:

_____

Solemnly affirmed before me at _____

This _____ day of _____2019

_____

Commissioner of Oaths for Quebec

ANNEXE 3

DECLARATION OF A MEMBER OF THE SELECTION COMMITTEE

I, the undersigned, a member of the selection committee for _____
(identify the contract)

solemnly declare that I have no particular pecuniary interest, direct or indirect, with respect to this contract.

I undertake not to divulge the mandate entrusted to me by the RCM, nor to use, communicate, attempt to use or communicate, both during my term of office and afterwards, 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:

_____

Solemnly affirmed before me at _____

This _____ day of _____2019

_____

Commissioner of Oaths for Quebec

ANNEX 4

ANALYSIS FORM FOR THE CHOICE OF AWARDING METHOD

THE NEEDS OF THE RCM	
Contract object	
Particular objectives (desired savings, quality, environment, etc.)	
Estimated value of the expense (including renewal options)	Duration of contract
TARGET MARKET	
Target region	Number of known companies
Is de participation of all known companies desirable ?	Yes ☐ No ☐
Otherwise, justify	
Estimation of the cost of preparation of a bid	
Other relevant information	
CHOICE OF AWARDING METHOD	
Agreement ☐ Price quote ☐ Regional public tender ☐	Invitation to tender ☐ Public tender open to all ☐
In the case of an agreement contract, were the measures of the Contract Management Regulations to promote rotation have been considered?	Yes ☐ No ☐
If yes, what are the measures concerned?	
If not, why is the rotation impossible?	
SIGNATURE OF THE RESPONSIBLE PERSON	
Name	Signature / Date