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The City of Montreal revises its by-law on contract management

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Redefining and expanding the concept of conflict of interest, clarifying situations of "ineligibility to contract", introducing a principle of supplier rotation, increasing the eligibility threshold for the award of a private contract. These are the main changes that the City of Montreal has made to what is from now on its by-law on contract management.

Section 573.3.1.2 of the *Cities and Towns Act*, CQLR c. C-19, which requires all municipalities to adopt a contract management policy, entered into force on March 1, 2010. There have been several versions of the City of Montreal's policy, which was first adopted on December 16, 2010, including the most recent version adopted on August 25, 2016.[1]

On January 1, 2018, the *Act mainly to recognize that municipalities are local governments and to increase their autonomy and powers*, SQ 2017 c.13 (or "Bill 122") transformed these contract management policies into by-laws. The City of Montreal took this opportunity to revise its own policy, a new version of which was circulated to various City authorities beginning May 28, 2018 in order to be adopted on June 22 2018. The new by-law enters into force on June 26, 2018.

Overview of the main changes

Clarifications relating to scope:

The policy's central objective was to "sanction wrongful acts committed in the context of city contracts",[2] whatever these acts may be. The by-law is amended to clarify that it applies not only to contracts entered into by the City of Montreal, but also to subcontracts directly or indirectly connected to those contracts or to the related procedures (s. 3), a point on which the previous wording was ambiguous.
The by-law also states that it is deemed to be an integral part of these contracts (s. 3, *in fine*).

Codification of certain practices:

As per s. 12, the City of Montreal is now obliged to preserve the personal notes and individual assessment

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prepared by each member of the selection committee, the composition, deliberations and recommendations of which remain confidential.

As per s. 31, the City of Montreal must maintain a register of ineligible persons; this register is separate and distinct from the Register of enterprises ineligible for public contracts held by the secretariat of the Treasury Board in accordance with the *Act respecting contracting by public bodies*, CQLR c. C-65.01.

Changes regarding ineligibility

Obligation of all subcontractors to declare not only that they have no conflict of interest, but also that they are not in a situation that confers them an unfair advantage (s. 5), meaning a situation in which they would have had access to information related to a call for tenders which was not publicly available, for any reason whatsoever (s. 1(12)).

For example, a subcontractor could be disqualified or have its contract terminated and be declared ineligible if the City of Montreal discovered that one of its former employees was associated in any way with the preparation of a call for tenders for the contract at issue.

This new section also recognizes an arbitration award that stated that the twelve-month prohibition on hiring an individual who participated in the preparation of a call for tenders was too broadly worded and amounted to an "an unreasonable hindrance to the employability of scientists;"[3] the proposed rewording (ss. 5-7) seeks to limit this prohibition to what is strictly necessary, i.e. situations where this participation confers an unfair advantage or creates a conflict of interest.

Prohibition of persons listed in the City of Montreal's register of ineligible persons from working on or from having an interest in a City of Montreal contract, without a specific authorization from the City (ss. 15-16, 28-30).

For example, an architect listed in the register of ineligible persons could not be included on a team of professionals contracted by the City of Montreal, and could not finance this team.

Clarification as to the cumulative nature of ineligibility periods for repeat offenders (s. 32)

Offenders who, during their first two years of ineligibility, commit another offence which would be punishable by five years of ineligibility, become ineligible for six years from the date of the second offence.

Relaxation and tightening of certain rules related to awarding contracts and contract management

Increase of the eligibility threshold: the City of Montreal can enter into a private contract if it involves an expenditure that is less than the expenditure threshold for a contract that can be awarded only after a call for public tenders in accordance with section 573 of the *Cities and Towns Act*, CQLR c. C-19 (s. 33). Fixed by ministerial decree, this threshold is currently set at $101,100.

Rotation principle: regarding these private contracts, the City of Montreal may not enter into two similar contracts with the same supplier within 90 days of each other (s. 34).

Introduction of rules specific to managing variations in the planned quantity of items for unit price contracts (ss. 1(14), 18) and the use of contingencies in budgeting; these contingencies are from now on specifically defined as "any modification of a contract that is accessory to that contract and that does not change its nature" (ss. 1(4), 19-20, translation).

Several of the proposed changes recognize the recommendations resulting from arbitration awards or created by the Office of the Inspector General of Montreal.[4] All of these changes are part of the City of Montreal's desire to reinforce the principles of healthy competition, transparency, and fairness that govern public markets in Quebec.

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1. City of Montreal, *Politique de gestion contractuelle (version finale), telle qu'adoptée par le conseil municipal, à sa séance du 23 août 2016, et par le conseil d'agglomération, à son assemblée du 25 août 2016*, ["Contract management policy (final version), as adopted by the City Council in its session on August 23, 2016, and by the agglomeration council at its meeting of August 25, 2016"], online.
2. See the Decision summary for case no. 1184990002 for decision-making documents sent to elected officials in anticipation of the agglomeration council's regular meeting on May 31, 2018, online, p. 13/35.
3. *Le syndicat professionnel des scientifiques à pratique exclusive de Montréal c. Montréal (Ville)*, 2016 CanLII 68692 (Mr. André Sylvestre) [translation].
4. See the Decision summary for case no. 1184990002 for decision-making documents sent to elected officials in anticipation of the agglomeration council's regular meeting on May 31, 2018, online.

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