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Entering Into a Contract With a Council Member?

Section 304 of the *Act respecting elections and referendums in municipalities*¹ (AERM) generally prohibits elected officials from having a direct or indirect interest in a contract with their municipalities.

However, Bill 39, the *Act to amend the Act respecting municipal taxation and other legislative provisions*, assented to on December 8, 2023, introduces a new section to the AERM (305.0.1) that provides an exception to this rule.

More specifically, this exception to AERM section 304 allows municipalities to enter into contracts to acquire or lease goods from a business² in which a council member holds an interest when:

- That business is the only one in the territory of the municipality and is closer to the place where council sittings are held than any other business in the territory of a neighbouring municipality that offers the same type of goods
- There is no business in the territory of the municipality that offers the same type of goods, the business is in the territory of a neighbouring municipality, and it is closer to the place where council sittings are held than any other business that offers the same type of goods

Construction materials that can be acquired under these new rules must be used solely for repair or maintenance work, and the total value of the materials cannot exceed \$5,000 per project.

This section also allows municipalities to enter into contracts for the services of a council member or a company in which the council member has an interest. However, the following conditions must be met.:

- The service in question is provided manually and generally requires a physical presence on the municipality's territory or in its facilities
- The municipality has taken the following steps:
 - a. For contracts whose expenditures are below the public tendering threshold, the municipality has not been able to select a tenderer after calling for tenders from at least three suppliers and publishing a notice of intent in accordance with section 938.0.0.1 of the *Municipal Code*, it being understood that the elected official or the business in which they have an interest must not have submitted a tender during the selective tendering process
 - b. For a contract that is subject to public tendering, the municipality issued a first call for tenders that did not allow it to select a tenderer, followed by a second call for tenders identical to the first, after which only the council member or the business in which they have an interest submitted a compliant tender, it being understood that the elected official or the business in which they have an interest must not have submitted a tender during the first call for tenders and the member must in no way, during the second call for tenders, have participated in the contract awarding process or benefitted from preferential treatment compared to other potential tenderers

Service contracts entered into in this way may not have a term of more than two years, including renewals.

To enter into a contract covered by section 305.0.1 of the AERM, a municipality must provide for that possibility in its contract management by-law. It must also require that certain information be published on its website: the council member's name, the name of the business with which the municipality is contracting, and a list of the purchases and leases under the contract or the object of the service contract, as well as the price of each purchase, lease, or service. This information must be updated at least twice a year and tabled at municipal council sittings at the same frequency.

Note that Bill 39 also introduces new sections into the *Cities and Towns Act*³ and the *Municipal Code of Québec*,⁴ which also address these concepts, but for municipal officers and employees.

¹ CQLR, c. E-2.2.

² The Minister of Municipal Affairs, Regions, and Land Occupancy determines by regulation the types of businesses covered by this exception (AERM s. 305.0.1).

³ CQLR, c. C-19, s. 116.0.1.

⁴ CQLR, c. C-27.1, s. 269.1.