

BY-LAW 9 CONCERNING PROCUREMENT, SERVICE AND CONSTRUCTION WORK CONTRACTS

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BY-LAW 9 – CONCERNING PROCUREMENT, SERVICE AND CONSTRUCTION WORK CONTRACTS

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BY-LAW 9 – CONCERNING PROCUREMENT, SERVICE AND CONSTRUCTION WORK CONTRACTS

PREAMBLE

The College is responsible for acquiring, at the opportune moment, the goods and services needed to accomplish its mission and to do so in such a way as to take advantage of the best market conditions. It must also ensure the sound management of all the goods acquired, moveable and immoveable property and consumable goods, which includes operations regarding the taking of inventories, the loan, storage and disposition of its property. Lastly, the College must carry out these operations in the most transparent, efficient and effective way possible. The College is committed in favouring the purchase of products that help maintain or improve the quality of the environment and promote sustainable development.

In compliance with its budget regime, the College is required to adopt internal regulations with respect to its acquisition of goods and services and construction work contracts. In addition, the College is subject to *An Act Respecting Contracting by Public Bodies* (R.S.Q. C-65.1) and its regulations passed thereunder (hereinafter referred to as the Act).

CHAPTER I – GENERAL PROVISIONS

Article 1.00 - Purpose

This By-law sets forth the general rules applicable to procurement, services and construction contracts entered into by the College to fulfill its mission and exercise the additional powers it holds under the *General and Vocational Colleges Act* (R.S.Q. c. C-29) (hereinafter referred to as the *College Act*).

Article 2.00 - Definitions

2.01 Unless the context indicates otherwise, the words and expressions listed below have the following meaning:

Bid bond: Guarantee of the bid submitted, issued in favour of the College.

Call for tenders by invitation: A notice addressed personally to suppliers inviting them to submit a written bid for goods or services. This notice includes a detailed specification prepared by the requesting unit and the Purchasing Department. (“appel d’offres sur invitation”)

College: CEGEP John Abbott College.

Construction: Construction work defined in the *Building Act* (R.S.Q. c. B-1.1) which requires that a contractor hold a license pursuant to Chapter IV of that statute. (“construction”)

Consumable goods: Goods that do not result in the creation of a long-term asset and are expected to be fully utilized during the current cycle are charged to operating funds.

Contract: Written agreement between the College and a supplier, a contractor or a service provider, indicating its purpose, as well as the consideration involved and terms and conditions for each of the parties. This agreement may be in the form of a purchase order. (“contrat”)

Contractor: Within the context of a construction contract, a legally incorporated business other than a non-profit corporate entity, a recognized professional as defined by the Office des professions or a self-employed worker. (“entrepreneur”)

Deposit cheque: Cheque certified by a financial institution payable to the College, or other negotiable commercial instruments, such as a bill of exchange or a money order, made payable to the College.

On-call contract: A contract with a service provider which is used for recurring needs and when the amount of goods and the frequency at which they are purchased are uncertain. (“contrat à exécution sur demande/contrat à commandes”)

Procurement: Purchase or rental of goods, which may include installation, operation or maintenance costs. (“approvisionnement”)

Public call for tenders: Invitation to suppliers to submit a bid on the SEAO as defined below. (“appel d’offres public”)

Regionalized public call for tenders: Invitation by the College to the suppliers of a specific region to submit a bid on the SEAO as defined below. (“appel d’offres public régionalisé”)

SEAO: The electronic tendering system set up under the Act. (“système électronique d’appel d’offres”)

Services: Services other than services relating to the integration of arts to architecture, building environments and governmental locations. (“services”)

Service Provider: Within the context of a service contract, a legally incorporated business other than a non-profit corporate entity, a recognized professional as defined by the Office des professions or a self-employed worker. (“prestataire de service”)

Specifications: A document describing the general terms and conditions and the technical requirements set forth by the College with regard to public calls for tenders or calls for tenders by invitation. (“devis”)

Supplier: Within the context of a procurement contract, a legally incorporated business other than a non-profit corporate entity, a recognized professional as defined by the Office des professions or a self-employed worker. (“fournisseur”)

Unit: A department or unit of the College. (“unité”)

Article 3.00 – Legal Framework and Scope

- 3.01** Subject to the exceptions under section 3.03, this By-law is applicable to any service, supply or construction work contract entered into by the College.
- 3.02** This By-law applies to the management of the College's property, that is, the taking of inventories, loan, storage and disposition.
- 3.03** This By-law is not applicable to the purchase, leasing or disposal of a building. It does not apply to employment contracts, dealership contracts, concession contracts, public utilities (electricity, natural gas and telephone), the purchase of school manuals, nor contracts under the travel and public relations policy.
- 3.04** This By-law complies with the following:
- An Act respecting Contracting by public bodies;
 - Regulation respecting supply contracts of Government departments and public bodies;
 - Regulation respecting construction contracts of public bodies;
 - Regulation respecting service contracts of public bodies;
 - Public Administration Act;
 - Market liberalization agreements entered into by the Government of Québec;
 - College By-law No. 3 with respect to the Financial Management of the College;
 - College Act.

CHAPTER II - PURCHASE AND RENTAL

Article 4.00 – General Principles

- 4.01** Subject to section 4.04, the Purchasing Department is solely responsible for the purchase and rental of goods and services.
- 4.02** The College acquires and rents the goods needed to accomplish its mission. The College may also accept gifts, make exchanges, and take advantage of loans on condition that this practice does not create liens obliging the College to acquire goods and services in contravention of the regulations in effect.
- 4.03** The property acquired or rented by the College is for the exclusive use of the College. Staff members may not use it, unless loaned or rented, except in the exercise of their duties. Staff and students who wish to take College property off-campus must follow applicable College procedures. Students may only use it as part of their academic or extra-curricular activities. Users must use it properly and take care of it.
- 4.04** The Bookstore and Library are responsible for the purchase of books, in compliance with *An Act respecting the development of Québec firms in the book industry* (R.S.Q. c. D-8.1).

- 4.05** Any contract to which this By-law applies is subject to the procedures herein. Any contract which does not comply with these procedures is null and void and involves only the personal responsibility of the employee, unless it has been ratified by the competent authorities in compliance with the financial management approval levels of College By-law No.1 and By-law No. 3.
- 4.06** Units submitting requests for goods and services shall clearly define their needs. To that end, they shall forward to the person in charge of the Purchasing Department the specifications on the goods and services requested. These specifications shall be very precise with respect to the type of need to be filled and end use of the goods and services. Above all, unless reasons to the contrary are submitted in writing, the process shall be pro-competitive. In addition, the purchases shall be planned in order to enable the Purchasing Department to comply with the objectives of this By-law.
- 4.07** A staff member may not have a direct or indirect interest in a contract to which this By-law applies if he/she can directly or indirectly be involved, through his/her work, in the purchase process, the preparation of the call for tender documents, the bid evaluation, the decision to award a contract, or if he/she is likely to be a user of the goods or services.

The first paragraph is not applicable:

- If the staff member's interest is limited to that of a shareholder of a company which he/she does not control, of which he/she is neither a director nor a senior executive, and in which he/she holds less than 10% of the outstanding voting shares.
 - If the individual acquired his/her interest by succession or gift and waived it or divested himself/herself of it as soon as practicable.
 - If the contract involves bonds, notes or other securities publicly offered by the College or the purchase of its bonds, notes or other securities on non-preferential terms.
 - When due to an Act of God, the interest of the College requires that the contract be entered into in preference to any other contract.
- 4.08** With respect to regionalized public calls for tenders or calls for tenders by invitation, the College shall make a determination as to the region involved in order to ensure a sufficiently high level of competitiveness. In so doing, it may use the definition of administrative regions as designated by the Government of Québec.
- 4.09** Whenever it seems advantageous, the College participates in group buying (global buying) on a sectional and regional basis. The College also favours partnerships and the exchange of services with other public bodies.
- 4.10** No public body may split or segment its procurement requirements or amend a contract for the purpose of avoiding the obligation to make a public call for tenders or any other obligation under the Act.
- 4.11** The College favours the purchase of products that help maintain or improve the quality of the environment and promote sustainable development.

4.12 To ensure that tender documents or any other related document or information not yet rendered public remain confidential, the following measures apply:

- Access to documents and the computer drives in which they are stored is limited to qualified persons under the control of the manager in charge.
- Personnel with access to these documents will be informed that they are confidential and will be asked to sign a certificate of confidentiality and declaration of interest.

Article 5.00 - Process

5.01 Subject to other provisions in this By-law, all contracts are awarded through public calls for tenders, calls for tenders by invitation or direct negotiations.

5.02 Construction Work Contracts

The College shall use direct negotiations or calls for tenders by invitation with at least two (2) suppliers for any construction work contract whose value is under \$25,000.

The College shall use regionalized public calls for tenders or calls for tenders by invitation, with at least two (2) suppliers where the market exists and it is in the best interest of the College, for construction work contracts with values between \$25,000 and \$100,000. Public calls for tenders are recommended for any project whose estimated value exceeds \$85,000.

Public calls for tenders shall be compulsory for all construction work evaluated at more than \$100,000.

5.03 Procurement Contracts

For orders whose value is under \$10,000, the College uses direct negotiations with supplier(s) where the market exists and it is in the best interest of the College.

The College shall use calls for tenders by invitation with at least (2) suppliers for the order of goods whose total value is between \$10,000 and \$25,000, where a market exists and it is in the best interests of the College.

The College shall have the option to use either regionalized public calls for tenders or calls for tenders by invitation, with at least two (2) suppliers where the market exists and it is in the best interest of the College, for the order of goods whose total value is between \$25,000 and \$100,000. Public calls for tenders are recommended for any order whose estimated value exceeds \$85,000.

Public calls for tenders shall be compulsory for the order of goods evaluated at more than \$100,000.

The College may negotiate directly with a supplier for the purchase of sand, stone, gravel or bituminous coated material whose value is under \$200,000.

The College may negotiate directly for a procurement contract with respect to teaching, research or development activities when, for technical or scientific reasons, only one supplier can fulfill the terms of the contract and there is no alternative solution or possibility of replacement.

5.04 Service Contracts

For services whose value is under \$10,000, the College uses direct negotiations with supplier(s) where the market exists and it is in the best interest of the College.

The College shall use calls for tenders by invitation with at least (2) suppliers for an order of services whose total value is between \$10,000 and \$25,000, where a market exists and it is in the best interests of the College.

The College shall have the option to use either regionalized public calls for tenders or calls for tenders by invitation, with at least two (2) suppliers where the market exists and it is in the best interest of the College, for the order of services whose total value is between \$25,000 and \$100,000. Public calls for tenders are recommended for any order whose estimated value exceeds \$85,000.

Public calls for tenders shall be compulsory for any service contract evaluated at more than \$100,000, except for professional service contracts with respect to professionals such as engineers, architects, land surveyors and forest engineers.

With regard to contracts involving engineers and architects, the College may use regionalized public calls for tenders, provided that the service order value is under \$250,000. Otherwise, the usual rules shall apply.

The College may negotiate directly with a service provider for a legal services contract or a financial or banking contract.

5.05 Contract Amendments

A contract may be amended if it is an incidental amendment and does not change the nature of the contract. In the case of contracts evaluated at more than \$100,000, any amendment shall be authorized by the Board of Governors (dirigeant de l'organisme).

In all cases, a memorandum from the person requesting the order or from the Purchasing Department shall be entered into the purchase record for auditing purposes.

Contract amendment or cumulative amendments with value of or exceeding 10% of the original contract agreement must be published on the SEAO within 60 days of such contract amendment or cumulative amendments with value of or exceeding 10% of the contract.

5.06 Exceptions

The provisions of section 5.00 shall not be applicable and the College shall have the right to negotiate directly in the following cases:

- In an emergency situation, if the life, health or security of individuals is threatened or if there is a substantial risk that the College's property may be damaged.
- When the contract can only be entered into with a certain contractor because of a warranty, a property right or an exclusive right, such as a copyright or a right based on an exclusive licence or a patent, or because of the artistic, patrimonial or museological value of the goods or services requested.
- Whenever, subject to the authorization of the Board of Governors, there is a reasonable belief that, in a case involving a matter of a confidential or privileged nature, its disclosure through a call for public tenders, might have an adverse effect or harm in any other way the public interest.
- Whenever, subject to the authorization of the Board of Governors, the College believes that it can demonstrate that, due to the subject matter of the contract and in compliance with the principles stated in section 2 of the Act, a call for tenders would not be in the public interest.

5.07 The Board of Governors' authorization shall be required for any procurement contract whose term, including renewals, is for more than three (3) years. In the case of standing offer agreements, the Board of Governors shall not, however, authorize a contract with a term, including renewals, of more than five (5) years.

The Board of Governors' authorization shall be required for any recurring service contract with a term, including renewals, of more than three (3) years. In the case of an on-call contract, the Board of Governors shall not, however, authorize a contract with a term, including renewals, of more than five (5) years.

5.08 The amounts indicated under this section are exclusive of all applicable taxes.

Article 6.00 - Review of Bids, Awards and Release of Information

6.01 The College shall appoint a selection committee made up of three (3) members, in addition to a secretary responsible for coordinating its activities. One of the committee members shall be an external resource.

The members of the selection committee shall be responsible for the review of bids submitted.

Any participant in the bid review process who has an interest in one of the bidding firms as per section 4.07 shall immediately notify, in writing, the person in charge of the Purchasing Department and indicate the nature of his/her interest.

6.02 The College shall not be required to accept any of the bids and reserves the right to cancel, at any time, a call for tenders. No bidder shall have, for any reason whatsoever, a right of action against the College regarding a decision to cancel a call for tenders.

6.03 Any bid submitted in breach of section 4.05 shall be set aside.

6.04 The selection committee shall decide which of the following contract award processes to use:

For procurement contracts:

- Price only (based on the lowest price);
- Price/quality ratio (based on the lowest adjusted price);
- For a minimum quantity and price (based on the lowest price).

For construction work contracts:

- Price only (based on the lowest price).

For service contracts:

- Price only (based on the lowest price);
- For a minimum quantity and price (based on the lowest price);
- Price/quality ratio (based on the lowest adjusted price);
- Quality only (based on the highest overall score).

6.05 When the College uses a contract award process other than the one based strictly on the price, the criteria and evaluation procedures relating to the bids shall be indicated in the call for tender documents. The College shall use the terms and conditions and quality evaluation procedures provided in the schedules to Regulations enacted under the Act.

6.06 Pursuant to By-law No. 3 on Financial Management, the College shall determine, based on the amount of the expense involved, who has the signing authority.

6.07 A contract entered into following a public call for tenders shall be published within 15 working days of the awarding of the contract in the SEAO.

6.08 Contracts with a value of \$25,000 or above shall be published within 30 days of their execution, in the SEAO.

6.09 Subject to section 6.10, at the opening of public tenders, the suppliers' names as well as their respective total prices (exclusive of taxes) shall be disclosed, subject to subsequent audits. The results of the opening of public tenders shall be published within four (4) working days of such opening in the SEAO.

The final description of the contract must be published in the SEAO within 90 days of the contract end date.

6.10 When quality evaluation is involved, only the names of the suppliers shall be disclosed. The results of the opening of public tenders shall be published within four (4) working days of such opening in the SEAO.

The College shall inform each bidder of the result of the quality evaluation of his/her bid within fifteen (15) days of the awarding of the contract.

The final description of the contract must be published on the SEAO within 90 days of the contract end date.

Article 7.00 – List of Suppliers

- 7.01** The Purchasing Department shall ensure the rotation of suppliers for all purchases. However, for contracts valued at less than \$25,000, the rotation principle shall only be applied if there is a sufficient market and it is in the best interests of the College.
- 7.02** The Purchasing Department shall maintain a good relationship with the College’s suppliers, ensuring that the integrity of the College’s suppliers or its employees not be questioned, that the relations between the suppliers and the College’s employees be maintained with courtesy, care, good faith and fairness, and that any conflict of interests or situation likely to create a conflict of interests be avoided.

Article 8.00 – Performance Evaluation

- 8.01** The College shall, in compliance with the Act, record in a written report, the evaluation concerning a supplier, contractor or service provider whose performance is unsatisfactory.
- 8.02** The College shall proceed with the evaluation no later than 60 days after the end of the contract and shall forward a copy of it to the supplier, contractor or service provider in question. If the College fails to proceed within this time limit, the performance of the supplier, contractor or service provider shall be deemed satisfactory.
- 8.03** Provided that it is indicated in its call for tender documents, the College may reject the bid of a supplier, contractor or service provider who, within two (2) years prior to the opening of public tenders, had an unsatisfactory job performance evaluation, failed to follow up on a bid or a contract or whose contract was cancelled due to his/her failure to comply with its terms and conditions.

Article 9.00 – Enactment and Amendments

Any amendment or repeal of this By-law shall be passed by the College’s Board of Governors and shall comply with the Act and Regulations enacted thereunder.

Article 10.00 – Delegation

The Board of Governors may, by resolution, delegate all or part of the functions conferred within the provisions of the Act and associated regulations to the Executive Committee or the Director General.

Article 11.00 - Responsibility

The Director of Facilities Management Services and the Director of Finance & Legal Affairs are responsible for the application of this By-Law.

Article 12.00 – Effective Date

This By-law shall come into force and effect on the date of its enactment by the College's Board of Governors.