

# BY-LAW 9 CONCERNING THE MANAGEMENT OF PROCUREMENT, SERVICE AND CONSTRUCTION WORK CONTRACTS

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# *BY-LAW 9 – CONCERNING THE MANAGEMENT OF PROCUREMENT, SERVICE AND CONSTRUCTION WORK CONTRACTS*

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# ***BY-LAW 9 – CONCERNING THE MANAGEMENT OF 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* (CQLR, c. C-65.1) (hereinafter referred to as the Act) and its regulations, policies and directives passed thereunder.

## **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* (CQLR, c. C-29).

It applies to supply, service and construction contracts covered under paragraphs (1) to (3) of the first paragraph of section 3 of the Act and contracts considered to be supply, service and construction contracts, that the College may enter into with a person or partnership covered under section 1 of the Act or with a natural person who does not operate a sole proprietorship. It is required under section 24 of the Act.

### **Article 2.00 - Definitions**

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

**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”)

**Head of the Organization:** The Board of Governors or, if it has delegated its functions as per Article 16 hereof, the Executive Committee or the Director General, as applicable.

**College:** CEGEP John Abbott College.

**Construction:** Construction work defined in the *Building Act* (CQLR. 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”)

**Notice of intention:** Following the intention of the College to enter into a contract by mutual agreement, procedure allowing any company to show its interest to execute this contract.

**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 3.02, this By-law is applicable to the management of all property and any service, supply or construction work contract entered into by the College.
- 3.02** 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 for travel and representation expenses.

## Article 4.00 – Contract Rules Compliance Monitor (*responsable de l’observation des règles contractuelles* (RARC))

- 4.01** The contract rules compliance monitor (*responsable de l’application des règles contractuelles* (RARC)) has the following functions:
- seeing that the contract rules prescribed by the Act and the regulations, policies and directives thereunder are complied with;
  - advising, and making recommendations or providing advisory opinions to the College on with contract rules;
  - recommending that measures are put in place within the College to ensure the integrity of internal processes;
  - exercise any other function that the Head of the Organization may require to ensure that contract rules are complied with.
- 4.02** The following information shall be submitted to the contract rules compliance monitor (RARC) so that they may perform the required actions: all information concerning a file requiring authorization by the Head of the Organization under the normative framework are to be sent to the contract rules compliance monitor (RARC) so that they may fulfill their role as advisor.

## ARTICLE 5.00 – Conflicts of Interest

- 5.1** To ensure that employees involved in managing public contracts are not in a conflict of interest, they are informed about statutes, regulations and other rules governing ethics and discipline through different means, such as documentation, presentation, webinar, training and portal.



## CHAPTER II - PURCHASE AND RENTAL

### Article 6.00 – General Principles

- 6.01** Subject to section 6.04, the Purchasing Department is solely responsible for the purchase and rental of goods and services.
- 6.02** 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.
- 6.03** 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.
- 6.04** The Campus Store and Library are responsible for the purchase of books, in compliance with *An Act respecting the development of Québec firms in the book industry* (CQLR, c. D-8.1).
- 6.05** 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.
- 6.06** 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.
- 6.07** A staff member may not be implicated, directly or indirectly in the purchase process, the preparation of the call for tender documents, the bid evaluation, the decision to award a contract, if they have a direct or indirect interest in a contract to which this By-law applies.

The first paragraph is not applicable:

- If the staff member's interest is limited to that of a shareholder of a company which they do not control, of which they are neither a director nor a senior executive, and in which they hold less than 10% of the outstanding voting shares.
- If the individual acquired their interest by succession or gift and waived it or divested themselves 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.

**6.08** 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.

**6.09** 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.

**6.10** 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. When establishing the value of a contract, all expenses and all options shall be included, if applicable.

**6.11** The College favours the purchase of products that help maintain or improve the quality of the environment and promote sustainable development.

## Article 7.00 - Process

**7.01** 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.

### **7.02 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.

### **7.03 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.

#### **7.04 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 subject to the regulation on the Tariff of fees for certain legal services rendered to bodies of the government, or a financial or banking contract.

## 7.05 Control Provisions Relating to Contract Amount, Supplements and Modifications

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 Head of the Organization.

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.

The following control provisions apply to the contract amount:

- The selection committee shall refuse to accept any of the tenders received, including where it considers that the prices are too high or disproportionate or that they do not reflect a fair price.
- The College shall reserve the right to claim from any tenderer the difference between the lowest tender amount and the one subsequently accepted where the lowest bidder fails to respect its tender, in order to avoid collusion between tenderers.
- When the lowest bid is judged to be unusually low, the College shall comply with the provisions set forth in sections 18.2 to 18.9 of the Regulation respecting construction contracts of public bodies (CQLR, c. C-65.1, r. 5).

## 7.06 Notice of Intention

For certain contracts entered into by mutual agreement as set forth in the *Act respecting the autorité des marchés publics* (CQLR c. A-33.2.1), involving an expenditure equal to or above the public tender threshold (\$100,000), a Notice of intention shall be published in the SEAO at least 15 days prior to the expected date of conclusion, allowing any company to show its interest to execute this contract.

The Notice of intention must indicate:

- (1) the name of the enterprise with which the public body intends to enter into the contract by mutual agreement;
- (2) a detailed description of the public body's procurement requirements and the contract obligations;
- (3) the projected contract date;
- (4) the reasons invoked by the public body for entering into a contract by mutual agreement despite the fact that the contract involves an expenditure equal to or above the public tender threshold; and

(5) the address at which and the deadline by which an enterprise may express interest electronically and demonstrate that it is capable of carrying out the contract according to the procurement requirements and obligations stated in the notice, that deadline being five (5) days before the projected contract date.

### **7.07 Exceptions**

The provisions of section 7.00 shall not be applicable and the College shall have the right to negotiate directly, with the authorization of the Head of the Organization, 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 Head of the Organization, 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.
- Subject to section 7.06, whenever 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.

**7.08** The Head of the Organization's 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 Head of the Organization shall not, however, authorize a contract with a term, including renewals, of more than five (5) years.

The Head of the Organization's 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 Head of the Organization shall not, however, authorize a contract with a term, including renewals, of more than five (5) years.

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

## **Article 8.00 - Review of Bids, Awards and Release of Information**

**8.01** As stipulated in the Treasury Board's Directive on the management of the supply, service and construction contracts of public bodies, 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 if it is a public call for tenders.

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 6.07 shall immediately notify, in writing, the secretary of the selection, and indicate the nature of their interest; the secretary shall inform and consult with the RARC.

**8.02** 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.

**8.03** Any bid submitted in breach of section 6.05 shall be set aside.

**8.04** The secretary informs the selection committee of 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).

**8.05** 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.

**8.06** 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.

**8.07** 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.

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

**8.09** Subject to section 8.10, at the opening of public tenders, the suppliers' names as well as their respective total prices (exclusive of all applicable 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.

**8.10** 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 their 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 9.00 – List of Suppliers**

**9.01** 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.

**9.02** 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 10.00 - Confidentiality of Documents**

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

10.1.1 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.

10.1.2 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.

10.1.3 The identity of takers of tender documents, may not be disclosed unless expressly authorize.

## **Article 11.00 – Opening Up Competition to Small and Medium Enterprises**

**11.01** To ensure that competition is open to small and medium enterprises and that the requirements are realistically defined in relation to the College’s needs, the following measures are put in place:

- Define realistic requirements related to its needs to ensure that the markets are open to a maximum of qualified tenderers.
- Eligibility and compliance conditions, and the tender quality evaluation criteria, where appropriate, shall not be defined or drafted in a manner that excludes tenderers who could very well satisfy the needs of the College.
- Product specifications should not unduly limit competition.
- Where feasible and appropriate, may issue tenders by batches.
- Properly define the requirements, potentially have a firm understanding of the market corresponding to the need and be able to determine in-house what should be included in the call for tenders. Markets may be monitored to remain abreast of developments, particularly in rapidly evolving sectors that change frequently such as information technology.
- May issue a notice for expression of interest to explore a new public market and obtain information from the sector in this regard. The notice for expression of interest signals a future call for tender to satisfy a need. The expression of interest should identify the requirements and expectations so that interested enterprises may answer the College's questions and offer a potential solution. This also allows to gain a better understanding of the market that exists to satisfy its need.

## Article 12.00 – Consultants

**12.01** To ensure that all employees and management are aware that a consultant is present on the premises, the following measure is put in place:

- Inform the affected employees.

**12.02** To restrict access to the premises and vital information in order to carry out consulting duties, the following measures are put in place:

Limit access to restricted documents (physical and electronic) solely to concerned employees in the performance of their duties:

- Specific areas off-limits to consultants could be identified.
- Controls on access to electronic files are implemented.
- Controls on access to physically restricted documents are implemented.

Access rights granted to an external consultant as well as the validity period of their access to the premises:

- Inform concerned directors about the importance of validating access rights granted to external consultants as well as the duration of any such access.

- Regularly verify that access rights granted to external consultants are necessary.
- Ensure that one or several measures are put in place to accompany an external consultant if specific access rights are granted, including when their presence is required outside regular business hours.

Remind employees about issues related to information security when external consultants are on the premises of the department.

Require contractors to adopt a code of conduct that will form part of the contract documents. This code could address the consultant's duty to never disclose or use for their benefit any information obtained during the performance of their mandate, to always identify themselves as an external consultant in a given situation, to refrain from trying to obtain or accept any benefit, reward or favour, or granting any benefit, reward or favour to an employee or director of the department.

## Article 13.00 – Performance Evaluation

- 13.01** 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.
- 13.02** 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.
- 13.03** 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 their failure to comply with its terms and conditions.
- 13.04** The College must record in a report the evaluation of the supplier or service provider where the total amount paid for a contract in the field of information technologies is equal to or greater than \$100,000. The College must do the same where the amount is less than \$100,000 insofar as the performance is considered to be unsatisfactory. (Article 79 of RCIT)

## Article 14.00 – Supplier Complaint Process

Any complaint shall be handed to the RARC, who is responsible for acknowledging receipt as soon as possible. The RARC proceeds with the analysis of the admissibility of the complaint. When it is admissible, the RARC then proceeds with its analysis and may amend the tender documents, as applicable. The RARC informs the supplier of its decision.

## Article 15.00 – Enactment and Amendments

This By-law shall come into force and effect on the date of its enactment by the College's Board of Governors. 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 16.00 – Delegation

As permitted under the Act, 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 17.00 - Responsibility

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

## Article 18.00 – Transitional and Final Provisions

This By-law complies with the following laws, regulations and other by-laws of the College which are hereby incorporated by reference herein and form an integral part hereof:

- The Act respecting contracting by public bodies (CQLR c. C-65.1);
- Regulation respecting supply contracts of Government departments and public bodies (CQLR c. C-65.1, r.2);
- Regulation respecting service contracts of public bodies (CQLR c. C-65.1, r.4);
- Regulation respecting construction contracts of public bodies (CQLR c. C-65.1, r.5);
- Regulation respecting contracting by public bodies in the field of information technologies (RCIT) (CQLR c. C-65.1, r. 5.1)
- Tariff of fees for professional services provided to the Government by advocates or notaries (CQLR c. C-65.1, r.11)
- The Act respecting the autorité des marchés publics (CQLR c. A-33.2.1)
- Market liberalization agreements entered into by the Government of Québec
- Directives from the Treasury Board
- Public Administration Act (CQLR c. A-6.04);
- Colleges Act (CQLR c. C-29);
- College By-law 3.