



## Bylaw 9

# Respecting Procurement Contracts for Goods, Services, and Construction



### Adoption and Revision History

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Bylaw 9 was adopted by the Board of Governors, resolution number CRC-2022-033 on November 23, 2022. This Bylaw replaces all versions of the Policy Concerning Procurement for Goods, Services and Construction Contracts in its entirety as of the date of adoption. Articles subsequently amended are indicated by the resolution number of the amendment appearing at the end of the article.

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## Preamble

This Bylaw and the management procedures are prepared in accordance with the mission, the values, and guiding principles as stipulated in the Letters Patent and the Preamble of Bylaw 1.

The College demonstrates good stewardship through the responsible and effective use of human, physical, environmental, informational, and financial resources.

In acquiring the goods and services necessary to achieve its mission, the College must ensure that it takes advantage of the best possible market conditions and achieves this with

**transparency** in the process of the adjudication and awarding of contracts;

**accessibility** of these processes to qualified tenderers;

**honest and fair** treatment of all vendors and contractors; and

**effective and efficient** contracting procedures, including careful, thorough evaluation of procurement requirements that support sustainable development and environmental principles.

These sound management practices form the basis of this bylaw and the procedures which follow from it.

## SECTION 1 – DEFINITIONS, PURPOSE AND SCOPE, LEGAL FRAMEWORK

### 1. DEFINITIONS

In this BYLAW, unless otherwise indicated, the words, terms and expressions used, shall have the meaning and application as follows:

- **ADJUDICATION:** the process by which the quotes of competing vendors or contractors are evaluated and ranked, and a contract is awarded.
- **BOARD:** the Board of Governors of Champlain Regional College of General and Vocational Education.
- **CAG:** the *Centre d'acquisitions gouvernementales*.
- **COLLEGE:** Champlain Regional College composed of its three (3) constituent colleges and the Administrative Services.
- **CONSTRUCTION:** construction work specified in the Building Act (CQLR, chapter B-1.1) for which the contractor must hold the licence required under the terms of Chapter IV of this Act.
- **CONTRACT:** a written agreement between the College and a supplier, a contractor or a service provider specifying the nature of the goods or services, construction work or the service concerned, the price and the contractual conditions and obligations for each party. This agreement may be in the form of a purchase order.

- CONTRACTOR: within the context of a construction contract, the party performing the construction work.
- GOVERNING BOARD: the Institutional Board of each College as per articles 48 and 49 of the Act.
- GOVERNMENT: the Government of Québec.
- INVITATION TO TENDER: a request for a price quotation addressed to suppliers inviting them to present their tender for a good or a service.
- LCOP: the *Loi sur les contrats des organismes publics* / the Act respecting contracting by public bodies (CQLR, chapter C-65.1)
- MUTUAL AGREEMENT: an agreement whose contents are determined solely by the contracting parties.
- ON DEMAND CONTRACT WITH A PRODUCT SUPPLIER: a contract with a supplier used when the needs are recurring and where the quantity of goods, the rate, or the frequency of their acquisition is uncertain.
- ON DEMAND CONTRACT WITH A SERVICE PROVIDER: a contract with a service provider used when the needs are recurring and where the number of requests, the rate, or the frequency of their execution is uncertain.
- PROCUREMENT: the acquisition of goods or services at the best possible total cost, in accordance with the criteria and specifications set by the College, generally via a contract.
- PROFESSIONAL SERVICES: services provided by architects, engineers, land surveyors, and similar professionals whose fees are governed by ministerial decree.
- PUBLIC CALL FOR TENDERS: an invitation to submit a quote by publishing a notice on the electronic tendering system approved by the Government.
- RARC: *Responsable de l'application des règles contractuelles* as defined in the LCOP, the employee designated by the Board who is responsible for the application of the contractual rules (see clause 3.3). Also known as the Contract Rules Compliance Monitor (CRCM).
- REGIONALIZED PUBLIC CALL FOR TENDERS: an invitation to submit a quote, published on the electronic tendering system approved by the Government, limited to tenderers in a specific geographical area or administrative zone determined by the College.
- SELECTION COMMITTEE SECRETARY (SCS): An individual in the organization that is trained and certified by the *Secrétariat du Conseil du Trésor*. In the context of this policy, only of the certified individuals can be identified as the Selection Committee Secretary.
- SERVICE: any service other than those regarding the integration of art to the architecture and environment of government buildings.
- SERVICE PROVIDER: within the framework of a service contract, the party providing the service.

- SPECIFICATIONS: general terms and technical requirements of the goods or services required by the College as described in the invitation to quote.
- SUPPLIER: within the framework of a procurement contract, the party supplying the goods.
- SUPPLY CONTRACTS: the purchase or lease of goods and services, which may include installation, operating or maintenance expenses.
- VALUE: the Canadian dollar amount of a quote or tender excluding all applicable taxes.
- WORKFORCE MANAGEMENT ACT: the Act respecting Workforce management and control within government departments, public sector bodies and networks and state-owned enterprises (Bill 15, LQ 2014, ch. 17).

## 2. PURPOSE AND SCOPE OF APPLICATION

In accordance with the budgetary and financial requirements governing the CEGEPs, the College must adopt an internal bylaw governing its procurement of goods and services and its construction work contracts.

The purpose of this bylaw is to establish the general rules applicable to public procurement contracts concluded by the College, within the framework of its mission as authorized by the General and Vocational Colleges Act (CQLR, chapter C-29). The College administration may adopt internal guidelines for the management of supply, service, and construction contracts consistent with the rules outlined herein.

This bylaw applies to any contract by which the College obtains goods or services or has construction work performed. For the purposes of this bylaw, the following are excluded:

- Contracts of employment
- Purchases of textbooks made in accordance with the Act respecting the development of Quebec firms in the book industry (CQLR, chapter D-8.1)
- The purchase, lease, or disposal of a building
- Agreements related to internship sites.

The College is not subject to this bylaw when it does not incur an expense of public funds.

## 3. LEGAL FRAMEWORK

3.1 This bylaw complies to the rules set out in the following laws, regulations, or other documents:

- General and Vocational Colleges Act and the regulations thereunder (CQLR, chapter C-29)
- Act respecting the Autorité des marchés publics (CQLR, chapter A-33.2.1)

- Act respecting contracting by public bodies and its associated regulations, policies, and directives (CQLR, chapter C-65.1)
- Act respecting the Centre d'acquisitions gouvernementales (CQLR, chapter C-7.01) and the Act respecting Infrastructures technologiques Québec (CQLR, chapter I-8.4)
- Act respecting the governance and management of the information resources of public bodies and government enterprises (CQLR, chapter G-1.03)
- Public Infrastructure Act (CQLR, chapter I-8.3)
- Act respecting the development of Québec firms in the book industry (CQLR, chapter D-8.1)
- Politique concernant les responsables pour l'application des règles contractuelles (C. T. 220867) (CQLR, chapter C-65.1, a. 25.1)
- Directive concernant la gestion des contrats d'approvisionnement, de services et de travaux de construction des organismes publics (C. T. 215340 du 13 juillet 2015 modifié par le C. T. 216690 du 5 juillet 2016 et le C. T. 217114 du 6 décembre 2016 et le C.T. 220866 du 7 mai 2019)
- Regulation respecting the standards, conditions, and procedure for alienation of an immovable of a general and vocational college (CQLR, chapter C-29, r. 3)
- Public Administration Act (CQLR, chapter A-6.01)
- Market liberalization agreements entered into by the Government of Québec
- Workforce Management Act (Bill 15, LQ 2014, ch. 17).
- Bylaw 5 - Financial Management of the Regional College

This bylaw is also subject to any laws, regulations, or directives that the Government may adopt in the future.

### 3.2 Delegation of power

The duties to be performed by the Board are provided for in the LCOP, *Loi sur les contrats des organismes publics*, through its regulations, policies, and directives.

The Board, by virtue of this bylaw and in accordance with Article 8.2 of Bylaw 5 concerning Financial Management of the Regional College, delegates to the Director General their designated replacement the powers and responsibilities vested in them by the *Loi sur les contrats des organismes publics* (LCOP), as well as by the *Directive concernant la gestion des contrats d'approvisionnement, de services et de travaux de construction des organismes publics*.

### 3.3 Responsable de l'application des règles contractuelles (RARC)

Under Chapter V.0.1 of the *Loi sur les contrats des organismes publics* (LCOP), the College must designate a person responsible for the application of contractual rules (RARC). The essential role of this person is to ensure that the contractual rules stipulated in the LCOP and its associated regulations, policies, and directives are applied in the College.

The functions of the RARC are:

- Ensuring the application of the contractual rules stipulated in the LCOP and its associated regulations.
- Advising the Director General and College officers and providing recommendations or opinions with respect to contract rules and any risks for the College.
- Ensuring that measures are in place within the organization to ensure the integrity of internal processes.
- Ensuring the staff performing contractual activities are well trained.
- Ensuring the fair treatment of complaints made to the College in connection with the awarding or granting of a public contract.
- Exercising any function that the Board or Director General may require consistent with the LCOP and its associated regulations, policies, and directives.

## SECTION 2 – PROCUREMENT PROCESS

### 4. GENERAL PRINCIPLES

- 4.1 The preparation of procurement contracts for goods, services, and construction work is the responsibility of the purchasers under the authority of the Director of Administrative Services.
- 4.2 All contracts falling under the framework of this bylaw must respect the provisions outlined therein. Any contract which does not respect these provisions will be deemed null and void for the College and becomes the sole responsibility of the employee who signed it unless it is ratified by the competent authority, and this, in accordance with the levels of approval of Bylaw 5 concerning Financial Management of the Regional College.
- 4.3 Employees who wish to order goods or services have the responsibility to define the nature of their needs. For this purpose, they will transmit to the appropriate College authority the specifications of the goods, or the services, requested using the prescribed requisition form and procedure. Unless written justification is given, the specifications will be generic enough to allow for reasonable marketplace competition. Moreover, procurement requests must be planned in a timely manner to allow the College to respect the objectives of this bylaw.
- 4.4 Any College employee, Governing Board member or Board member, having a direct or indirect interest in a company quoting on a contract governed by the provisions of this bylaw, must declare it and may not participate directly or indirectly in the process of the acquisition, in the preparation of invitation-to-tender or public call for tender document, in the evaluation of the tenders, nor in the decision to award the contract.

The above paragraph does not apply:

- If the employee is a shareholder in the company which they do not control, of which they are neither administrator nor director, having less than 10% shares giving them the right to vote.
  - If the employee acquired control by inheritance or donation and relinquished these rights and ceased all affiliation with the company as quickly as possible.
  - If the contract consists of bonds, coupons, or other securities offered to the public by the College; or in the acquisition of its bonds, coupons, or other securities under non-preferential conditions.
  - In an exceptional case, when the interest of the College requires that the contract be awarded to some other company.
- 4.5 The College will not split or segment the procurement requirements, nor will it amend a contract with the intention of avoiding the application of the provisions of the LCOP, or this bylaw.
- 4.6 Within the framework of a regionalized public call for tender or an invitation to tender,



the College will determine the region concerned to ensure a sufficient level of competition.

- 4.7 Sustainable development and environmental impacts should be considered in the procurement specifications and in the awarding of contracts. The LCOP and its regulations provide tools to help public organizations favour a sustainable approach to procurement. Whenever it is deemed appropriate, the College should use these tools to favour a sustainable approach.
- 4.8 Whenever it is deemed appropriate, and when it does not contravene any law, regulation, bylaw, policy or framework, local procurement, within the three administrative regions of the College, should be considered in the purchasing process and awarding of contracts.
- 4.9 Under the law creating the CAG, *Centre d'acquisitions gouvernementales*, the College participates in group purchasing whenever this practice is mandatory. In optional cases, the College will participate when the agreement is advantageous to the College. The College supports partnerships and exchanges of services with other public agencies.
- 4.10 For all procurement contracts that are awarded by a method other than a public call for tender, the College will ensure that there are measures in place to allow a rotation of qualified suppliers whenever possible, in the interests of fairness and sound management practices consistent with the spirit of the LCOP. The College must also invite, at least, one small or medium sized business (PME) to bid. However, for contracts valued at less than \$25,000, a rotational system among the suppliers will only apply when there is enough competition, and it is advantageous to the College.
- 4.11 Any person who participates in a procurement activity must act in good faith and, in particular, they must report any dishonest or irregular business practice or any act of collusion or corruption. As such, a staff member who observes an irregular situation must inform the RARC, the Director General, the Director of Human Resources or the Director of Administrative Services. Whenever possible, staff members shall also inform their immediate supervisor.
- 4.12 Any person involved in a procurement activity must avoid being in a conflict of interest or a perceived conflict of interest. As such, they have an obligation to disclose the conflict to their immediate supervisor, who must subsequently inform the Director of Administrative Services of any personal interest, or what could reasonably be considered as such, that could influence the impartiality and objectivity of the award or management of the resulting contract.

Consequently, any employee may not directly or indirectly benefit personally from a contract awarded by the College.

- 4.13 A business may file a complaint with the College regarding a public tender if the tender documents, or an amendment to the tender documents:
- provide for conditions that do not ensure fair and equitable treatment of

competitors;

- do not allow competitors to participate, even though they are qualified to meet the expressed need;
- do not otherwise comply with the regulatory framework.

A complaint may also be made in relation to a private contract if, after publication of a notice of intent in the government electronic tendering system (SEAO), the company wishes to express its interest in carrying out the contract. The procedure for handling complaints can be found on the Champlain Regional College website.

- 4.14 Under the stipulations of the Workforce Management Act, the College may not enter into a service contract if it eludes the workforce-related control measures taken under that Act. Service Contracts valued at \$10,000 or more with a natural person must be approved by the Board or its delegate and service contracts valued at \$25,000 or more with a legal person must also be approved by the Board or its delegate.

## 5. CHOICE OF PROCUREMENT PROCESS

Subject to the other measures contained within the present bylaw, any adjudication of contracts is done by public call for tenders, by invitational call for tenders or by mutual agreement according to the provisions of this article.

Any adjudication of contracts, be it written or verbal, must be confirmed, in writing, either by an official purchase order issued by the College's Administrative Services Department, or by an official document signed by two (2) directors as per Bylaw 5, article 8.2.2.

### 5.1 **Contract equal to or greater than the current public tender threshold**

When the estimated value of the contract is equal to or greater than the current public call for tender's threshold, the College must proceed by public call for tenders.

### 5.2 **Contract equal to or greater than \$25,000 but less than the current public tender threshold**

When the estimated value of the contract is equal to or greater than \$25,000 but less than the public call for tender's threshold, the College may proceed by invitational bidding with a minimum of two (2) suppliers. Written bids based on the same definition of needs are mandatory for this type of call for tenders.

A public call for tenders is preferred when the estimated value of the contract represents 90% or more of the current public tendering threshold.

In exceptional cases, the College may also proceed by mutual agreement. In such a case, a rationale must be submitted to the Director of Administrative Services and kept on file as justification for the exception.

### 5.3 **Contract less than \$25,000**

The College may proceed with an invitational tender when the market exists and when it is advantageous to use a tender process. Invitation to tender is usually written but can, in certain cases, be verbal.

When the value of the contract is less than \$25,000, the College may also proceed by mutual agreement.

The Director of Administrative Services may decide that an invitational tender call with a minimum number of bidders is required or recommend that the contract be concluded by mutual agreement.

### 5.4 **Contract above the current public tender threshold that may be entered into by mutual agreement**

A contract may be entered into by mutual agreement by the College in the following cases:

- In cases of emergency, if the life, health, or safety of persons may be endangered or if there is a serious risk of damage to the College's property.
- With the authorization of the Board or its delegate, when only one contractor is possible because of a warranty, proprietary or exclusive right, such as a copyright or a right based on an exclusive license or patent, or because of the artistic or heritage value of the good or service required.
- With the authorization of the Board or its delegate, who must inform the Minister responsible as per the accountability reporting directives, when the matter is of a confidential or protected nature, and it is reasonable to believe that its disclosure in the context of a public tender could compromise the nature of the tender or otherwise harm the public interest.
- With the authorization of the Board or its delegate, who must inform the Minister responsible as per the accountability reporting directives, when the College believes that it will be possible to demonstrate, given the purpose of the contract and in accordance with the principles set out in Division II of the Act, that a call for tenders would not be in the public interest. In such a case, a notice of intent is required prior to the awarding of the contract.
- When the contract is for the procurement of research and development or of educational activities and, for technical or scientific reasons, only one supplier can perform the contract and no alternative or substitute exists.
- For a contract for legal, financial, or banking services.
- For government contracts for goods or services where the procurement is controlled by a supplier with a statutory monopoly.
- For contracts for the integration of the arts into the architecture and environment of government buildings and sites.
- When contracting with other public bodies.

All procurement made under the exceptions listed in this section must be pre-authorized by the RARC. A supporting rationale is to be placed in the procurement file for audit and accountability purposes.

#### 5.5 **Modification of a contract**

A modification of a contract is permitted provided that the modification is an accessory, that the nature of the contract does not change, and that the approvals are in accordance with Bylaw 5. For contracts, whose value is greater than the public threshold, a modification must be authorized by the Board or its delegate. For contracts over the public threshold, the rationale must be posted on the government electronic tendering system.

In the case of a building construction contract whose value is \$3,000,000 or more (article 48 of the Regulation respecting construction contracts of public bodies), a change order exceeding ten percent (10%) of the initial value of the contract must be supported by a written confirmation to the contractor that the College has the necessary funds to execute the change order.

In all cases, a written justification must be provided to the RARC by the person requesting the change or by the purchaser reporting the Director of Administrative Services, which will be filed with the original contract.

The College will maintain a formal record of all contracts to which modifications have been made, or where exceptions to this bylaw have been authorized and will report these to the Government as per the accountability reporting directives.

All exemptions authorized will be enacted in writing with reasonable follow-up, verification, and accountability.

#### 5.6 **Special authorizations**

The authorization of the Board or its delegate is required for any contract for goods for which the planned duration, including any renewal, is greater than three (3) years. In the case of an on-demand contract, the College may not conclude a contract for which the planned duration, including any renewal, is greater than five (5) years.

The authorization of the Board, or its delegate, is required for any contract for services of a repetitive nature, for which the planned duration, including any renewal, is greater than three (3) years. In the case of an on-demand contract, the College may not conclude a contract for which the planned duration, including any renewal, is greater than five (5) years.

The rationale for the authorization must be submitted to the Ministry as per the accountability reporting directives.

#### 5.7 **Notice of intent**

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, a Notice of Intent shall be published on SEAO at

least 15 days prior to the expected date of the conclusion of the contract. The College shall comply with the applicable process outlined in this Act.

The rationale for the authorization must be submitted to the Ministry as per the accountability reporting directives.

## 6. ANALYSIS OF BIDS, AWARD AND PUBLICATION OF INFORMATION

### 6.1 Analysis of tenders

The Administrative Services Department is responsible for ensuring the analysis of tenders.

- 6.1.1 As soon as a participant in the analysis of the tenders becomes aware that they have a personal or business interest in any of one of the tenderers, they must inform the Administrative Services Department of the nature of this interest in writing.
- 6.1.2 The College may reserve the right to reject the bid of any supplier, service provider or contractor who, during the two years preceding the tender opening date, has been the subject of an unsatisfactory performance evaluation, completed in accordance with the LCOP, has failed to respond to a bid or contract, or has had a contract terminated for failure to comply with the terms and conditions of the contract, provided that the College so states in the tender documents.
- 6.1.3 The College is not bound to accept any of the tenders and reserves the right to cancel, at any time, an invitation to tender. No tenderer can, for any reason whatsoever, take recourse against the College following its decision to cancel an invitation or call for tender.

### 6.2 Adjudication

The College will adjudicate contracts according to methods outlined in the Act respecting contracting by public bodies/ *Loi sur les contrats des organismes publics* and the following regulations:

- i) Contracts for purchase or lease of goods:
    - As per the Regulation respecting certain supply contracts of public bodies.
  - ii) Contracts for services:
    - As per the Regulation respecting certain service contracts of public bodies.
  - iii) Contracts for construction:
    - As per the Regulation respecting construction contracts of public bodies.
  - iv) Contracts for IT services:
    - As per the Regulation respecting contracting by public bodies in the field of information technologies.
- 6.2.1 When the College uses the selection criteria and a rating method other than price alone, the criteria and the evaluation methods to be used must be included in the tender documents at the time of the invitation to tender. In cases regarding quality

evaluation, the College must use the evaluation conditions and procedures determined by government regulations that are outlined in the annexes and regulations adopted under the terms of the LCOP.

- 6.2.2 When there is quality evaluation, a selection committee composed of a selection committee secretary (SCS), and at least three (3) members, one of whom must be external to the College, unless the Board or its delegate authorizes an exception to the external member requirement.
- 6.2.3 The selection committee secretary is nominated by the Board or its delegate and is responsible for coordinating the activities of the committee and ensures the compliance of the quality evaluation process. The secretary must be consulted in the preparation of the tender documents.
- 6.2.4 Each committee member has the responsibility to independently analyze the quality of each compliant tender submission before the selection committee prepares its evaluation.
- 6.2.5 Bylaw 5 concerning Financial Management of the Regional College determines the authority responsible for the adjudication of the contract according to the value of the expenditure.

### 6.3 **Publication**

Contracts concluded following a public call for tender must be published on the designated government electronic tendering system (SEAO) within fifteen (15) calendar days of the adjudication of the contract.

- 6.3.1 Specific information concerning contracts, depending on their value, must be published on the designated government electronic tendering system (SEAO) according to government directives.
- 6.3.2 At the opening of the public tender, the name of the tenderer is declared. When the tender is based solely on price, the value of the bid is also declared, subject to the compliance verification. The results of the public tender must be published on the designated government electronic tendering system (SEAO) within four (4) business days following the opening of the tenders.
- 6.3.3 When there is quality evaluation, only the names of the tenderers are revealed. The results of the public tender must be published on the designated government electronic tendering system (SEAO) within four (4) business days following the opening of the tenders.
- 6.3.4 The College will inform each tenderer of the result of their-own tender quality evaluation within fifteen (15) calendar days following the adjudication of the contract.

## 7. **PERFORMANCE EVALUATION**

- 7.1 The College must record in a written report, and in accordance with the regulations of the LCOP, the evaluation of a supplier, a contractor, or a service provider whose performance is unsatisfactory.

- 7.2 The College must carry out this evaluation within sixty (60) calendar days of the end of the contract and transmit a copy of it to the supplier, the contractor or the service provider concerned. If the College does not proceed within this timeframe, the performance of the supplier, the contractor or the service provider will be considered satisfactory.
- 7.3 In the case of Information Technology contracts, where the total value of a contract is equal to or greater than \$100,000, the College must record in a report, the evaluation of the supplier or service provider. The College must do the same when the amount is less than \$100,000 insofar as the performance is considered to be unsatisfactory.
- 7.4 The College may, provided that it is specified in the tender documents, refuse to consider any supplier who, in the two (2) years preceding the tender opening date, has been given an unsatisfactory performance report by the College, failed to follow up on a tender or contract or had a contract cancelled because of failure to comply with the contract conditions.

## **8. ADOPTION OF BYLAW AND AMENDMENTS**

- 8.1 This bylaw shall come into effect on the date of its adoption by the College's Board. Any amendment or repeal of this bylaw shall be passed by the College's Board, after consultation with each Governing Board, in compliance with the LCOP and its associated regulations, policies, and directives.
- 8.2 A review of this bylaw shall take place at least once every 5 years.