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Policy DJB

SUPPLY, SERVICES, & CONSTRUCTION CONTRACTS

This Policy is to establish a uniform procedure for the purchase or tendering of goods, services and construction work for the School Board, including administrative offices, maintenance departments, schools, centres and all other areas of the School Board operations. It applies to all purchases, however financed.

The Policy seeks to:

- Maintain a comprehensive control on the spending of public funds.
- Standardize the purchasing process for all goods or services for the School Board.
- Purchase as effectively as possible in terms of cost, quality and delivery, all goods and services required for the day-to-day operations and planned objectives of the School Board.

The Policy considers that the procurement process itself consists of four steps:

- Tendering the potential contract (Article 4)
- Generating the Purchase Orders (Article 5)
- Authorizing the acquisition (Article 6)
- Verifying the conformity of the deliverables (Article 7)

In addition, this Policy provides for the documentation and monitoring of its application (Article 8).

1. LAWS, REGULATIONS AND AGREEMENTS TO BE OBSERVED

- 1.1 Education Act.
- 1.2 Regulations and Directives of the Ministry of Education.
- 1.3 The Law Respecting Contracting by Public Bodies (LCOP) and the related by-laws concerning supply, services, and construction contracts with public bodies.
- 1.4 Policies adopted by the Council of Commissioners.
- 1.5 School Board's annual budget.

2. DEFINITIONS

- 2.1 Definitions and references to this policy are provided as Appendix A.
- 2.2 Additional definitions relating to its implementation and application are provided as an appendix to the related Organizational Guide.

3. IMPLEMENTATION AND MONITORING

- 3.1 Director General and School Board Administrators are directed to ensure the implementation of the policy consistent with the School Board's bylaw on Delegation of Powers.
- 3.2 The audit committee (a permanent standing committee to the Council of Commissioners under Law 88) is directed to monitor and annually report to council with respect to the School Board's compliance with this policy.

4. TENDERING OF CONTRACTS

- 4.1 This policy recognizes Contracting by Mutual Agreement (CMA) and Contracting by Public Tender (CPT) as defined in the LCOP (Law Respecting Contracting by Public Bodies) and related regulations as the two principle methods of procurement. In order to provide operational flexibility while respecting the need for appropriate controls and regulatory compliance, the School Board has identified methodologies for its purchasing activities as follows:

4.1.1 Public call for Tenders

The School Board must use the public call for tenders' method for all non-exempted contracts having an estimated value of \$100,000 or more, and may use it for any lesser valued contract.

The process is prescribed by the LCOP and related legislation (such as the RCA, RCS, and RCTC) and is reflected in the Organizational Guide for this policy's application.

4.1.2 Invited Call for Tenders

The School Board must use the invited call for tenders' method for contracts having an estimated value of greater than or equal to \$25,000 and less than \$100,000, and may use it for any lesser valued contract.

The process is prescribed by the LCOP, RCA, RCS, and RCTC and reflected in the Organizational Guide for this policy's application.

4.1.3 Request for Quotations

The School Board must use the Request of Quotations method for contracts having an estimated value of greater than or equal to \$2,500 and less than \$25,000, and may use it for any lesser valued contract.

The School Board must prepare a request for quotation and submit it to at least three (3) qualified suppliers.

The School Board will receive written confirmations of prices and conditions from interested invited suppliers before awarding the contract.

The requirements of the process are reflected in the Organizational Guide for this policy's application.

4.1.4 Mutual Agreement Contract

The School Board may use mutual agreement for contracts having an estimated value of less than \$2,500.

The School Board may use mutual agreement for professional services having an estimated value of less than \$100,000 if the fee is set by legislation or to a pre-set standard. The School Board must prepare a request for quotation and submit it to at least one qualified supplier, and will take reasonable steps to ensure that a fair price and terms are obtained.

The process is prescribed by the LCOP, RCA, RCS, and RCTC and reflected in the Organizational Guide for this policy's application.

4.2 Contract Value

4.2.1 The estimated amount of a contract for the purpose of determining the tender methodology is determined beforehand and not affected by the results of the tender process.

4.2.2 The amount before sales taxes, expressed in Canadian currency, of all the orders that might be awarded to the successful supplier for the contemplated project or initiative.

4.3 Tender Method Exceptions

4.3.1 Exceptions to the tender methods indicated by estimated contract amount:

4.3.1.1 Are provided for under Law 17 and related legislature;

4.3.1.2 Are identified by the School Board (utilities, employee expense reimbursements, etc.);

4.3.1.3 Are documented in the Organizational Guide related to this policy.

4.3.2 The School Board shall document non-compliance with the tender methodology required under this policy.

5. PURCHASE ORDERS

5.1 Purchase requisitions and Purchase Orders shall be prepared in the format and fashion described in the Organizational Guide to this Policy.

5.2 Requisitions that are incomplete or inaccurate will be returned to the originator.

5.3 Purchase Orders shall be issued in conformity with the information received in the form of an authorized Requisition.

5.4 The Buyer/Purchasing Agent shall be responsible for the accuracy of all information on the purchase order before signing.

- 5.5 All goods purchased through the School Board remain the exclusive property of the School Board.
- 5.6 The Buyer/Purchasing Agent, or his delegate, is responsible for obtaining goods and/or services at the best price available.

6. AUTHORIZATION

- 6.1 All School Board purchases will be authorized by the Council of Commissioners except those referred to under Article 4.1.4 (Mutual Agreement Contracts) and those delegated to the Director General in accordance with the School Board By-Law entitled "Delegation of Powers by the Council of Commissioners to the Director General".
- 6.2 The Chief Executive Officer as defined under the LCOP must contract all agreements exceeding a three-year term.
- 6.3 The Director of Administrative Services, or his delegate, must contract all agreements exceeding a one-year term.
- 6.4 The Director of Administrative Services, or his delegate, must authorize all capital requisitions.
- 6.5 All purchases of equipment or fixtures requiring attachment or connection to a building, or services on School Board facilities, must be authorized by the Director responsible for Material Resources to ascertain that all costs, compatibility with existing installations, accessibility and public safety have been considered.
- 6.6 All purchases of computer equipment must be discussed with the Director responsible for Information Technology or his delegate to ascertain compatibility with existing and planned installations and to ensure that proper support will be available over the lifespan of the asset.

7. VERIFICATION OF CONFORMITY OF THE DELIVERABLES

- 7.1 Upon receipt, the goods, services, or outputs of construction work shall be verified against the deliverables as defined in the purchase documents.
- 7.2 Compliance and non-compliance shall be documented and signed off by the person authorizing the PO and/or invoice or his delegate.
- 7.3 The Director of Administrative Services or his delegate will ensure exceptions which may impact on future supplier selection are properly documented consistent with the LCOP.

8. MONITORING OF THE PROCUREMENT PROCESS

- 8.1 The Director of Administrative Services shall ensure the proper functioning of a process providing for the monitoring and summarization of the conformity of procurement practice to this policy and its related Organizational Guide.
- 8.1 This process shall be used to provide for reporting:
 - 8.1.2 To the Chief Executive Officer as defined by the LCOP;
 - 8.1.3 To the Audit Committee for its oversight under the requirements of Law 88;
 - 8.1.4 For compliance with statutory reporting under the LCOP;
 - 8.1.5 To the Director of Administrative Services to monitor the functioning of the policy.

9. CONFLICT OF INTEREST

- 9.1 Employees of the School Board will not engage in any activity that conflicts with their responsibilities in the school system.
- 9.2 This Policy complements the By-Law entitled "Code of Ethics and Professional Conduct for Commissioners". A commissioner who has a conflict of interest must disclose this conflict to the Council of Commissioners.

Overview of the Law Regarding the Contracting of Public Bodies (Law 17)

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1. Introduction

This overview provides a context for the implementation of a policy on procurement processes compliant with the requirements of Law 17 – “Loi sur les contrats des organismes publics” (LCOP).

As custodian of the Policy on Procurement Management & LCOP, the role of the CEO of the New Frontiers School Board is to support the stakeholders and to manage the practices set out in this document.

The Organizational Guide to this Policy will provide the detailed implementation of the methods and controls required by the provisions of this Policy.

The purpose of the LCOP is to determine the conditions that are to govern the contracts that a public body may enter into with a for-profit legal person established for a private interest, a general, limited or undeclared partnership, a sole proprietorship or an enterprise most of whose employees are handicapped persons.

In compliance with all applicable intergovernmental agreements (a public procurement liberalization agreement between Québec and another jurisdiction), the conditions determined by this Act aim to promote:

- Transparency in contracting processes;
- The honest and fair treatment of tenders;
- The opportunity for qualified tenders to compete in calls for tenders made by public bodies;

- The use of effective and efficient contracting procedures, including careful, thorough evaluation of procurement requirements that reflects the Government's sustainable development and environmental policies;
 - The implementation of quality assurance systems for the goods, services or construction work required by public bodies; and
 - Accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.
- 2. Objectives**
- The harmonization of procedures used in public sector procurement.
 - The implementation of legal basis for procurement in PPP (Private Public Partnerships).
 - To provide for joint call for tenders.
 - To ensure compliance of regulation across intergovernmental agreements.
 - In brief, a framework for public sector procurement that provides for the implementation of government policy decisions via compliant ministry and establishment level procurement policies and procedures.
- 3. Features**
- Delegation of responsibility to the establishment level CEO.
 - Accountability reporting by the CEO.
 - Publishing of information related to contracts and tendering.
- 4. Scope**
- All public bodies not specifically excluded from the Act, such as Municipalities, the National Assembly, Hydro Québec, Loto-Québec, and the CSST.
 - a. Relationships covered by the Act include those with :
 - ✓ Private for profit entities;
 - ✓ General or limited partnerships;
 - ✓ Sole proprietorships;
 - ✓ Businesses where a majority of the employees are handicapped.
 - b. Relationships specifically excluded under the Act include those with:
 - ✓ Not for profit entities;
 - ✓ Individual persons not in business;
 - ✓ Any other bodies not specifically included.
 - c. Transaction types contemplated by the Act include:
 - ✓ Public Private Partnership (PPP) Contracts;
 - ✓ Delivery Order Contract: Supply Contract;
 - ✓ Task Order Contract: Service Contract or Construction Contract;
 - ✓ Any other contract determined by government regulation (e.g. building purchase or lease).
 - Transaction types specifically excluded by the Act include:
 - ✓ Contracts with engineers, architects, land surveyors, forest engineers;
 - ✓ Contracts below the threshold.
- 5. Selection of tender Methodology**
- Tender by Mutual Agreement (MA) if:
 - Contract Value is less than the threshold;
 - Emergency situation – people and or property are at risk;
 - Only possible contractor (e.g. due to guarantee, copyright, license, heritage, patent, etc.);
 - Confidential nature of work prevents Public Call for Tender (PCT);
 - Public interest not served by a Public Call for Tender (PCT);
 - Any case specifically provided for by the regulations (Legal services; Financial services (does not include auditors); Banking services; R&D or teaching).

- Public Call for Tender (PCT)
 - Contract does not qualify for Tender by Mutual Agreement AND is not otherwise exempted.
 - Organization elects to proceed to Voluntary Public Call for Tender.
- 6. **Requirements of a Public Call for Tender**
 - Publication
 - Must include posting on the SEAO website (www.seao.ca):
 - Name of contracting body (NFSB); brief description of deliverable and place of delivery; security if required; applicable intergovernmental agreements and, where and how to obtain tendering documents, which must include:
 - ✓ Procurement requirements and contract award rules;
 - ✓ Eligibility requirements;
 - ✓ Compliance requirements that cause automatic rejection of a tender;
 - ✓ Closing date;
 - ✓ Indication that the process is non-binding.
 - Criteria for Awarding Contract
 - Cost only or Qualitative factor(s):
 - ✓ Price only (or price plus impact cost factor if stated);
 - ✓ Defined minimum level of service: lowest price (S1,S2,S4,S5);
 - ✓ Measure of quality: lowest adjusted price (S2,S5);
 - ✓ Quality only: highest final score:
 - i. Services only, mandatory for architect and engineer;
 - ii. May be used for Travel agencies, publicity, and land surveyors.
 - ✓ Must use quality committee if considering quality in awarding contract:
 - i. Appointed secretary plus a minimum of three members;
 - ii. Consensus decisions only / secretary does not vote / no averaging of results.
- 7. **Tendering Documents Requirements**
 - In compliance with procurement requirements and contract award rules, including:
 - Eligibility requirements for the tender:
 - The necessary qualifications, authorizations, permits, licences, registrations, certificates, accreditations and / or attestations.
 - That the supplier have an establishment carrying on, on a permanent basis, under the name of the supplier and accessible during regular business hours in the province of Quebec or in a territory covered by an intergovernmental agreement.
 - Any other eligibility requirements that may be specified in the tender documents.
 - Compliance requirements, if any, which result in automatic rejection of a tender.
 - For example:
 - ✓ That the place and/or closing date and/or time are complied with.
 - ✓ That all required documents are filed.
 - ✓ That all required signatures and authorizations are present.
 - ✓ That erasures or corrections to the price are initialled.
 - ✓ That the tender is conditional.
 - ✓ That the price and quality are not separated.
 - Public Opening
 - Must be performed in the presence of a witness in a public place.
 - On the date and time specified.
 - Disclosure must be made of the name and the price (if known) of each tender (Price is not disclosed if quality is evaluated).
 - After Public Opening
 - Publication of results:
 - ✓ Must be performed within 4 days of the public opening:
 1. Results of the public opening must be made available on the SE@O;
 2. Price is not disclosed if there is a quality evaluation.

- ✓ Verification of the eligibility and compliance requirements:
 1. Verification of the eligibility and the compliance of each tender;
 2. If a tender is rejected, the supplier must be informed within 15 days after the contract adjudication.
- ✓ Information to suppliers (if quality is evaluated).
- ✓ No later than 15 days after the contract adjudication:

If evaluation is via [Schedule 1](#), publication must include whether tender is accepted and the name of the successful tender and price submitted.

If evaluation is via [Schedule 2](#),

 - a) Whether tender is accepted, the quality score adjusted price and rank.
 - b) Name of the successful tender, the quality score and the adjusted price.

8. **Requirements of a Tender by Mutual Agreement (MA)**

- Publication of all expenditures greater than \$25,000 at least every six months:
 - Name of supplier;
 - Date and amount of contract (including renewal options);
 - Nature of work or goods required.

9. **Delegation by CEO of right to authorize an amendment to a contract**

- Amendment is an accessory and does not change the nature of the contract.
- Delegation is performed in writing.
- Additional expenditure resulting from the amendment may not exceed 10% of the initial contract amount.

10. **Provisions for Special Cases and Exceptions**

- Contract Amount less than threshold – Voluntary Call for Public Tender.
- Other special topics include:
 - Special rules for Voluntary Call for Public Tender;
 - Exceptions that exist for certain services and contracts such as publicity, travel services, architects, road materials, and activities on foreign soil;
 - Certification of goods, Qualification of service providers, Call for tender in two stages;
 - Delivery order and task order contracts;
 - Call for tender in two stages – quality stage / price stage;
 - Mixed contracts (design-build construction);
 - Administrative Contracts;
 - Limitations to the terms of contracts (including renewal options) which the CEO may authorize.

11. **Definitions:**

Chief Executive Officer (CEO):

The legal person responsible for the administrative management of the public body. This includes but is not limited to ensuring proper implementation and compliance with the law, regular reporting compliance, and ensuring the functioning of the quality committee(s). In the case of a school board, the Council of Commissioners is the CEO. The Council may delegate all or part of the responsibilities to the Executive Committee or the Director General. There is no provision under the Act for any further delegation of the responsibilities of the CEO.

Supply Contracts:

Relate to the purchase, lease, or rental of moveable property, and may include the cost of installing, operating, and maintain the property.

Service Contracts:	Contracts in which the execution is of a professional or technical nature. Professional services generally involve one or more of conception, creation, research, analysis, and recommendation. Technical services generally relate to the execution of a service, often by the application of predetermined standards.
Construction Contracts:	Contracts to which the Building Act applies and for which the contractor must hold the license required.
Tender:	The Act recognizes two types of tender procedures – Public Call for Tender (PCT), and Mutual Agreement (MA). Public Call for Tender (PCT) is mandatory for all contracts above the threshold.
Threshold:	Dollar value above which a contract must normally proceed via call for public tender (PCT). According to the Act, \$100,000 for education and health establishments, although local policies may set a lower threshold if they so desire.
Contract Valuation:	The public body may not split, segment, amend, or fail to consider renewal or other options inherent to an agreement in determining the value for the purposes of selecting the tender method or to avoid any provision under the act.
Joint Call for Tender:	A call for tender issued cooperatively by two or more public bodies for a total requirement composed of the sum of the requirements of each of the partnering bodies. One of the tendering bodies becomes the body responsible for the tender, and the rules of the call for tender are those that apply to that body. The Joint Call must identify every public body party to the call, and they must deal with the selected supplier at the conditions specified. Finally, the joint call must take into consideration the impact of the joint call upon the regional economy.
Regional Public Call for Tender:	Tender specifies, in addition to any other conditions, that the tender submissions be eligible only from parties within a designated region. The intention of the government is that purchasing practices be used where possible to promote regional interests. At the same time, school boards are advised that they must defend any limitations that are placed upon who may compete for contracts.

Contract Type	Sub Type	Basis of Tender Evaluation Under Law 17 (LCOP)			
		Price Only (consider impact cost)	Minimum Acceptable Quality Criteria	Measure of quality	Highest Quality Only
Supplies		Most Common Method	Acceptable Method	Acceptable Method	n/a
Services	Technical	Most Common Method	Acceptable Method	Acceptable Method	Rare
	Professional	Acceptable Method	Acceptable Method	Most Common Method	Obligatory for architectural and engineering contracts Acceptable for publicity campaign Acceptable for travel services > \$100,000 Acceptable for contracts with fixed tariffs
Construction		Most Common Method	Acceptable Method	Acceptable for mixed services contract	n/a
Rules for Evaluation		Lowest Price	Lowest Price	Lowest Adjusted Price (Price adjusted by measure of quality)	Highest Quality Score
References for Evaluation		RCA – Art 13 RCS – Art 13 RCTC – Art 16	RCA - Art 22 + Schedule 1 RCS – Art 20 + Schedule 1 RCTC – Art 23 + Schedule 1	RCA – Art 23 + Schedule 2 RCS – Art 21 + Schedule 2 RCTC – Art 25 + Schedule 2	RCS – Art 22 + Schedule 2 (Art 1-7)

Schedule 1 = RCA and RCS Annexe 1 = RCTC Annexe 4 = Conditions and Methods of quality assessment for lowest price evaluations.
 Schedule 2 = RCA and RCS Annexe 2 = RCTC Annexe 5 = Conditions and Methods of quality assessment for adjusted price evaluations.