



# REGISTER OF POLICIES, PROCEDURES AND BY-LAWS

## PURCHASING POLICY

<b>Code:</b>	<b>Policy 5.1</b>
<b>Date of Coming into Force:</b>	<b>June 2009</b>
<b>Number of Pages:</b>	<b>10</b>
<b>Origin:</b>	<b>Finance Department</b>
<b>Operator and Storage Site:</b>	<b>Finance Department</b>
<b>History:</b>	<b>Resolution #04-07-05 Resolution #09-06-05</b>



## TABLE OF CONTENTS

Goal.....	3
Sources.....	3
Principles .....	3
Implementation .....	4
Applicability .....	4
General .....	5
Tendering of Contracts .....	6
Other Acquisition Method .....	8
Amounts.....	8
Release of Information .....	9
Responsibility.....	9
Award of Contract .....	9
Delegation of Authority .....	9
Effective Date .....	10
Modifications .....	10
Addendum A – Definitions .....	(i – iii)
Addendum B – Exceptions .....	(iv – v)
Addendum C – Act Respecting Contracting by Public Bodies .....	(vi – ix)

## **POLICY AND RULES RELATED TO SUPPLY, SERVICE, AND CONSTRUCTION CONTRACTS**

### **1. GOAL**

The goal of the present policy is to provide a framework to the Lester B. Pearson School Board for the supply of goods, services and construction work paid with public funds and to determine the rules regarding the award of such contracts. This policy applies to contracts less than \$100,000.

### **2. SOURCES**

The references for the policy are the following:

- a. The *Education Act*;
- b. The *Act Respecting Contracting by Public Bodies* and the by-laws regarding supply, services and construction contracts with public bodies;
- c. Intergovernmental orders and agreements on liberalization of trade signed by the Quebec Government;
- d. The School Board's delegation of powers by-laws.

### **3. PRINCIPLES**

While respecting any governmental agreement applicable to the School Board and in accordance with the *Act Respecting Contracting by Public Bodies* and its by-laws, this policy aims at promoting:

- a. transparency in contract awarding;
- b. treating competitors equitably and honestly;
- c. the possibility for qualified competitors to participate in the School Board's invitation to tender;

- d. using effective and efficient contracting procedures which include, in particular, appropriate and a thorough assessment of the needs and requirements, while taking into account the Government's orientations with regard to sustainable development and the environment;
- e. establishing methods of quality assurance covering supply of goods, services, or construction work needed by the School Board;
- f. accountability reporting based on the Chief Executive Officer's (Addendum C) responsibilities.

#### **4. IMPLEMENTATION**

- 4.1. The Council of Commissioners, the Executive Committee, the Director General, the Assistant Director General, the Department Directors, the School Principals and Center Directors are the governing bodies authorized to commit the School Board's funds in compliance with the School Board's Delegation of Powers By-Laws made public.
- 4.2. To this end, the Council of Commissioners adopts the present policy, ensures its review, publication and implementation as needed.
- 4.3. Monitoring of the purchasing process is part of the normal internal supervision of the School Board's activities, the external auditor's mandate, and where appropriate the internal auditor.

#### **5. APPLICABILITY**

- 5.1. The present policy applies to the School Board's purchasing of goods, services and construction work from a supplier, a service provider or a contractor who is:
  - a) a profit-making legal person established for a private interest;
  - b) a general partnership, limited partnership or joint venture;
  - c) a sole proprietorship;
  - d) an enterprise most of whose employees are handicapped persons.

- 5.2 Exceptions to where the Legislation and Regulations will be applied are found in Addendum B.
- 5.3 This policy applies only to public funding covered by the Legislation and other references noted in section 2.

## **6. GENERAL**

- 6.1. Any of the School Board's acquisitions of less than \$100,000 must be acquired according to this policy and the documents on which it is based, while respecting the funds available.
- 6.2. Any of the School Board's acquisitions will be purchased according to the purchasing process pursuant to the *Act Respecting Contracting by Public Bodies* and its by-laws or, where applicable, according to the purchasing process pursuant to this policy. As indicated in the provisions of the legislation, the School Board may elect to award a contract based on lowest price, lowest price meeting minimum quality standards, lowest price adjusted for quality or quality only.
- 6.3. The School Board favours grouped procurements for goods and services, where applicable, as long as this way of purchasing does not jeopardize the economy in the Montreal area.
- 6.4. The School Board favours the purchase of goods and services originating from Quebec first, while abiding by the inter-governmental agreements.
- 6.5. The School Board must request a bid security, a performance bond and a guarantee for wages, material and services where required by the *Act Respecting Contracting by Public Bodies*. The School Board may request such guarantees for any other purchasing process.
- 6.6. The School Board remains the owner of all the goods acquired irrespective of their location in the various departments, schools, and centres and is the only one to benefit from the services or construction work it acquires.
- 6.7. The School Board may award a mutual agreement contract in situations provided by the *Act Respecting Contracting by Public Bodies* and its by-laws, whatever the amount. (Addendum B)
- 6.8. Before signing a mutual agreement contract, the School Board has to be diligent in ensuring fair prices and conditions from the supplier, service provider or contractor.

- 6.9. The School Board will explore the possibility of purchasing products with an environmental benefit where circumstances permit.
- 6.10. Anyone responsible for a negotiation must not stand to benefit personally or financially from the negotiation at hand or any subsequent purchases.

## **7. TENDERING OF CONTRACTS**

### **7.1. Public call for tenders**

- a)** The School Board must use the public call for tenders for all contracts estimated over \$ 100,000.
- b)** The public call for tenders is the process prescribed by the Legislation in
- i. The Act Respecting Contracting by Public Bodies*
  - ii. The Regulation Respecting Supply Contract by Public Bodies*
  - iii. The Regulation Respecting Service Contracts of Public Bodies*
  - iv. The Regulation Respecting Construction Contracts of Public Bodies.*
- c)** When no intergovernmental agreement is applicable to the contract, the School Board may proceed with a regional call for tender, unless this process does not allow for a sufficient number of tenders.
- d)** The School Board may publish a public call for tenders for contracts where the amount is less than \$ 100,000. In this case, the procedures provided by the Legislation, subject to adjustments, are authorized.

### **7.2. Invited call for tenders**

- a)** The School Board must use an invited tender process for contracts of an estimated value greater than \$ 50,000 but less than \$ 100,000.
- b)** The School Board may use an invited tender process for contracts less than \$50,000. In this case, the process provided by this policy will apply.
- c)** A minimum of three suppliers must be invited as part of the process.
- d)** The details of the process and other information will be established by the School Board in its call for tender documents and will have to include the following components:
- 1 - The date, time and location to receive the tenders;

- 2 - The obligation for the bidders to forward tenders in writing;
- 3 - The awarding procedure, either lowest price, lowest price meeting minimum quality standards, lowest price adjusted for quality or quality only.
- 4 - A statement that the School Board does not bind itself to accept the lowest bidder or any tender.

### 7.3 Request for quotations

- a) The School Board must use a request for quotation process for all contracts estimated at an amount greater than \$5,000 but less than \$50,000.
- b) The School Board may use a request for quotation process for supply contracts under \$5,000. In this case, the request for quotation procedure provided by this policy will apply.
- c) The School Board must submit this request to at least two (2) suppliers, indicating the good(s), service(s) or construction work(s) required by the School Board, the contract awarding procedure and any other relevant information.
- d) Before awarding the contract, the School Board will receive written confirmation of prices and conditions by the invited suppliers who are interested.

### 7.4 Mutual agreement contract

- 7.4.1 The School Board may use the mutual agreement contract for all its contracts estimated at an amount less than \$ 5,000.
- 7.4.2 The School Board communicates directly with at least one supplier, indicating the good(s), service(s) or construction work(s) required by the School Board and any other relevant information.
- 7.4.3 Before awarding the contract, the School Board will ensure a fair price and terms from this supplier.
- 7.4.4 The School Board may use mutual agreement contracts for professional service contracts estimated at an amount less than \$ 100,000 if the fee is set by legislation or to a preset standard. In this case, the School Board selects the professional service provider which, in its opinion, is most able to provide the services required.

## 7.5 Task order or delivery order contracts

7.5.1 Regardless of the purchasing procedure selected, the School Board may, for practical reasons, sign a delivery order contract or a task order contract with the successful bidder.

7.5.2 The School Board's call for tender documents, or the information given to the suppliers when using the request for quotation or the mutual agreement process, must indicate that the School Board intends to commit, at the end of the process, to a delivery or task order.

## 8. OTHER ACQUISITION METHOD

The Director General may authorize in writing, to proceed with procurement through another acquisition method than that prescribed by this policy, as long as by acting in this manner the School Board complies with the policy's principles and the legislation contained therein.

## 9. AMOUNTS

9.1 The estimated amount for each order is to be compared to the threshold values for each mode of tendering. The mode of tendering is to be determined before the tender process is started and cannot be affected by the results of the tender.

9.2 The amounts without taxes are to be used.

9.3 If required, amounts need to be converted to Canadian currency.

9.4 The amounts to be compared against the threshold values provided in this policy are the estimated amounts for each individual order. The values of multiple orders need not to be summed except in the following case:

- a) In the case of an individual project, all orders which may be awarded to the same supplier as part of this one project must be considered as a group. A project is defined as a single initiative, which is planned, which has a specific objective, a specific scope, a specific start-date and a specific end-date.



## **10. RELEASE OF INFORMATION**

- 10.1 The Department Directors are responsible for ensuring the School Board's compliance with the release of information requirement, pursuant to the *Act Respecting Contracting by Public Bodies* and its bylaws.

## **11. RESPONSIBILITY**

- 11.1. Except for contracts related to Equipment Services, the School Board's Purchasing Department is responsible for the preparation, the opening of tenders and analysis of received tenders following a public call for tenders, a call for invited tenders or a request for quotation for the School Board's contracts.

## **12. AWARD OF CONTRACT**

- 12.1. The method for awarding contracts by the School Board must be clearly indicated in the tender documents or discussed with suppliers, if such is the case.
- 12.2. Any School Board commitment towards a supplier, service provider or contractor must be confirmed by a contract signature or the issuance of a purchase order.
- 12.3. Any contract or purchase requisition must be authorized and signed by one of the School Board's appropriate authority officers as described in the Delegation of Powers By-law.

## **13. DELEGATION OF AUTHORITY**

Certain functions and powers of the Council of Commissioners are delegated to the Executive Committee and the Director General as provided for by section 181 and 174 of the Education Act as well as by By-Laws 2/98 (Director General) and 6/00 (Executive Committee) subject to the revision of these By-Laws and any amendment to the Education Act.

#### **14. EFFECTIVE DATE**

- 14.1. This policy revokes and replaces any other policy or prior By-Law on this matter and is effective on the date of its adoption by the Council of Commissioners.
- 14.2. In case of disagreement between this policy and the *Act Respecting Contracting by Public Bodies* and its Regulations, the Act and its Regulations have precedence.

#### **15. MODIFICATIONS**

To the exception of Addendum A (definitions), none of the addendums are an integral part of the present policy. They are added to the present policy for information purposes only and can be modified without consultation

## ADDENDUM A

### Definitions

a) Contractor

Natural person or corporate body providing services in the construction field

b) Delivery order contract

Contract signed with one or several suppliers when the needs are recurring and the quantity of goods and frequency of purchase are uncertain.

c) Goods

Any furniture, instrumentation systems, equipment and consumable supply.

d) Invited call for tenders

Process by which the School Board invites a certain number of suppliers, service providers or contractors to submit their tenders pertaining to the acquisition of goods, services or construction work.

e) Mutual agreement contract

Process by which the School Board awards directly to a supplier, service provider or contractor, a supply contract for goods, services or construction work, after they have submitted their prices and terms to the School Board.

f) Professional services contract

Contract for the purpose of achieving some intellectual work mainly requiring design, creation, research and analysis tasks or that of a professional whose profession is subject to a *Professional Code*.

g) Public call for tenders

Process by which the School Board publicly invites suppliers, service providers or contractors to submit their tenders pertaining to the acquisition of goods, services or construction work, in compliance with the *Act Respecting Contracting by Public Bodies* and its by-laws.

## ADDENDUM A

### Definitions (continued)

h) Purchase Order

Document duly signed by an authorized person enabling a supplier, a service provider or a contractor to deliver goods, provide a service or execute construction work according to pre-established conditions.

i) Request for quotations

Process by which the School Board asks a certain number of suppliers, service providers or contractors to submit their prices and terms in writing, for the purpose of a project, the acquisition of goods, services or construction work.

j) Service contract

Contract for services of a technical nature or professional services.

k) Service provider

Natural person or corporate body providing services of a technical or professional nature or non-professional nature.

l) Supplier

Natural person or corporate body providing goods and equipment

m) Supply contract

Purchase or rental of moveables, which could include installation, operating or maintenance costs of said moveables.

n) Task order contract

Contract signed with one or several service suppliers or contractors when the needs are recurring and the quantity of requests and frequency of execution are uncertain.

## **ADDENDUM A**

### **Definitions (continued)**

o) Tender documents

Documents, terms and conditions issued by the School Board relating to a call for tender

## ADDENDUM B

### EXCEPTIONS

#### Excerpts from:

(Sections 3 in fine and 13 of the Act Respecting Contracting by Public Bodies R.S.Q. ch. C-65.1)

**3.** The following public procurement contracts are subject to this Act when they involve public expenditure:

Contracts of affreightment, contracts of carriage other than those subject to the Education Act (chapter I-13.3), damage insurance contracts and contracts of enterprise other than construction contracts are considered to be service contracts.

**13.** A contract involving expenditure above the public tender threshold specified in section 10 may be entered into by mutual agreement

1) if there is an emergency that threatens human safety or property;

2) if there is only one possible contractor because of the existence of a guarantee, an ownership right or an exclusive right such as a copyright or a right based on an exclusive licence or patent, or because of the artistic, heritage or museological value of the required property or service;

3) if the contract involves confidential or protected information whose disclosure in a public call for tenders could compromise its confidential nature or otherwise hinder the public interest;

4) if the public body considers that it will be able to prove, in accordance with the principles set out in section 2, that a public call for tenders would not serve the public interest given the object of the contract concerned; or

5) in any other case determined by government regulation.

Authorization.

In the cases described in subparagraphs 3 and 4 of the first paragraph, the contract must be authorized by the chief executive officer of the public body, who must inform the minister responsible on an annual basis.

2006, c. 29, s. 13.

Excerpt from: (Sections 27 and 28 of the Regulation respecting supply contracts of public bodies)

#### CONTRACT FOR THE ACQUISITION OF SAND, STONE, GRAVEL OR BITUMINOUS COMPOUNDS

**27.** A contract to acquire sand, stone, gravel or bituminous compounds involving an expenditure below \$200,000 may be entered into by mutual agreement.

O.C. 531-2008, s. 27.

## ADDENDUM B

### EXCEPTIONS (continued)

#### CONTRACT RELATING TO RESEARCH AND DEVELOPMENT OR TEACHING

**28.** A supply contract relating to research and development or teaching activities may be entered into by mutual agreement where, due to technical or scientific reasons, only one supplier is able to carry it out and there is no other alternate solution or substitute goods.

O.C. 531-2008, s. 28.

(Sections 35, 37, 39 and 41 of the Regulation respecting service contracts of public bodies)

#### LEGAL SERVICE CONTRACTS

**35.** A legal service contract may be entered into by mutual agreement.

O.C. 533-2008, s. 35.

#### FINANCIAL OR BANKING SERVICE CONTRACTS

**37.** A financial or banking service contract may be entered into by mutual agreement.

O.C. 533-2008, s. 37.

#### ADVERTISING CAMPAIGN CONTRACTS

**39.** A public body may solicit only a quality demonstration to award an advertising campaign contract.

The amount indicated in the contract may not be greater than the amount predetermined in the tender documents.

O.C. 533-2008, s. 39.

#### TRAVEL SERVICE CONTRACTS

**41.** A public body may solicit only a quality demonstration to award a travel service contract involving an expenditure equal to or above the public tender threshold.

In that case, the public body negotiates the amount of the contract with the service provider whose acceptable tender obtained the highest score for quality.

O.C. 533-2008, s. 41.

## ADDENDUM C

### CHIEF EXECUTIVE OFFICER'S RESPONSIBILITIES

#### Extract of Section 8 of the Act Respecting Contracting by Public Bodies:

“The chief executive officer is, in the case of a body referred to in subparagraph 5 of the first paragraph of section 4, (...) in the case of a school board, the council of commissioners. The board of directors or the council of commissioners may, by regulation, delegate all or part of the functions conferred on the chief executive officer to the executive committee, the director general (...)”

#### List of functions the Chief Executive Officer may hold according to the *Act respecting contracting by public bodies*:

**13.** Authorize a contract by mutual agreement in one or another of the situations below, and inform the minister responsible on an annual basis.

(...)

3) if the contract involves confidential or protected information whose disclosure in a public call for tenders could compromise its confidential nature or otherwise hinder the public interest;

4) if the public body considers that it will be able to prove, in accordance with the principles set out in section 2\*, that a public call for tenders would not serve the public interest given the object of the contract concerned;

\*Principles stated in section 2:

1) transparency in contracting processes;

2) the honest and fair treatment of tenderers;

3) the opportunity for qualified tenderers to compete in calls for tenders made by public bodies;

4) 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;

5) the implementation of quality assurance systems for the goods, services or construction work required by public bodies; and

6) accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.



## ADDENDUM C

### CHIEF EXECUTIVE OFFICER'S RESPONSIBILITIES (continued)

**17.** However, if the contract involves an expenditure above the public tender threshold (\$100,000), an amendment that entails an additional expenditure must moreover be authorized by the chief executive officer of the public body. The chief executive officer may delegate, in writing and to the extent specified, the power to authorize such an amendment. Additional expenditures authorized under a given delegation may not total more than 10% of the initial amount of the contract.

#### List of functions the Chief Executive Officer may hold according to the *Regulation respecting supply contracts of public bodies*:

**18.** Such (delivery) orders may, however, be awarded to any of the selected suppliers whose submitted price does not exceed the lowest price by more than 10 %, so long as the awarding rule is authorized by the chief executive officer of the public body before the notice of a call for tenders is published.

**33.** The authorization of the chief executive officer of the public body is required for every contract whose expected term, including any renewal, is greater than 3 years. Despite the foregoing, the chief executive officer of the public body may not authorize a delivery order contract whose expected term, including any renewal, is greater than 5 years.

**33.** That authorization is also required before entering into a contract involving an expenditure equal to or above \$100,000 if only one supplier submitted a compliant tender.

That authorization is also required before entering into a contract involving an expenditure equal to or above \$100,000 if

- (1) only one supplier submitted a compliant tender; or
- (2) only one supplier submitted an acceptable tender following a quality evaluation.

In the case provided for in subparagraph 2 of the second paragraph, the selection committee must not know the price and the chief executive officer of the public body is to determine whether or not the awarding process should be continued.

**45.** Within 30 days after the expiry of the time in section 44\* or following receipt of the supplier's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the supplier of the decision.

\*Expiry time in section 44:

A supplier may forward comments in writing on the report to the public body within 30 days following receipt of a report of unsatisfactory performance.

## ADDENDUM C

### CHIEF EXECUTIVE OFFICER'S RESPONSIBILITIES (continued)

List of functions the Chief Executive Officer may hold according to the *Regulation respecting service contracts of public bodies*:

**46.** The authorization of the chief executive officer of the public body is required for every contract of a repetitive nature whose expected term, including any renewal, is greater than 3 years. Despite the foregoing, the chief executive officer of the public body may not authorize a contract whose expected term, including any renewal, is greater than 5 years.

**46.** That authorization is also required before entering into a contract involving an expenditure equal to or above the public tender threshold if

- (1) only one service provider submitted a compliant tender; or
- (2) only one service provider submitted an acceptable tender following a quality evaluation.

In the case provided for in subparagraph 2 of the second paragraph, the selection committee must not know the price and the chief executive officer of the public body is to determine whether or not the awarding process should be continued.

**58.** Within 30 days after the expiry of the time in section 57\* or following receipt of the service provider's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the service provider of the decision. If the chief executive officer fails to act within the prescribed time, the service provider's performance is considered to be satisfactory.

\*Expiry time in section 57:

A service provider may forward comments in writing on the report to the public body within 30 days following receipt of a report of unsatisfactory performance.

List of functions the Chief Executive Officer may hold according to the *Regulation respecting construction contracts of public bodies*:

**39.** Authorization from the chief executive officer of the public body is required before a notice of the call for tenders is published if the tender validity period is greater than 45 days.

That authorization is also required before entering into a contract involving an expenditure equal to or above \$100,000 if

- (1) only one contractor submitted a compliant tender; or
- (2) only one contractor submitted an acceptable tender following a quality evaluation.

## ADDENDUM C

### CHIEF EXECUTIVE OFFICER'S RESPONSIBILITIES (continued)

**39.** Authorization from the chief executive officer of the public body is required before a notice of the call for tenders is published if the tender validity period is greater than 45 days.

(2) only one contractor submitted an acceptable tender following a quality evaluation (continued)

In the case provided for in subparagraph 2 of the second paragraph and in the case of a mixed contract for construction work and professional services, the selection committee must not know the price and the chief executive officer of the public body is to determine whether or not the awarding process should be continued.

**51.** Naming the Board's representative to proceed with the mediation to solve a dispute with a contractor.

**58.** Within 30 days after the expiry of the time in section 57\* or following receipt of the contractor's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the contractor of the decision.

\*Expiry time in section 57:

A contractor may forward comments in writing on the report to the public body within 30 days following receipt of a report of unsatisfactory performance.

**60.** For construction work related to work relating to a building, the chief executive officer of the public body is to give an account of the application of the procedure to solve disputes to the Minister every year\*.

\*Applicable for the two years after the coming into force of the Regulation: October 2008 to October 2010.