

## Update on the Rules Applicable to the Awarding of Municipal Contracts

By Isabelle Chouinard



The rules applicable to the awarding of municipal contracts have been amended significantly over the last few years, particularly since the coming into force of the interprovincial agreements on trade liberalization. These agreements have had a specific effect on the dollar threshold for compulsory application of calls for tenders, on the method of publishing calls for public tenders and on the rules for awarding certain professional services contracts which could previously be entered into by private agreement.

Moreover, last year the Quebec legislature subjected other types of professional services contracts to the tender process in order to offset certain allegations to the effect that candidates in an election had been offered their elected posts "on a silver platter" in exchange for "future considerations." It should be said that the inquiry carried out by the chief electoral officer did not uncover any evidence to substantiate these allegations. Nonetheless, until further notice, professionals will be subject to the same rules as all other service providers, with some exceptions.

As stated above, this situation will apply "until further notice," because the government must, by regulation, establish the rules for the awarding of professional services contracts or contracts whose purpose is to obtain energy savings for a municipality. The government is currently working on a draft regulation. We will deal specifically with this regulatory power at the end of this bulletin.

We begin by considering the types of contracts subject to the call for tenders process.

### General Principles

Henceforth, the applicable rules will be the same for all municipalities, regardless of size. Subject to the exceptions discussed below, these rules will apply to the awarding of an insurance contract, a contract for the performance of work, a contract for the supply of equipment or materials, or a contract for the supply of services.

Thus:

- contracts for less than \$25,000 may be entered into by private agreement;
  - contracts for \$25,000 or more but less than \$100,000 may only be awarded after a call for tenders, by way of written invitation, to at least two contractors or two suppliers, as the case may be; and
- contracts for \$100,000 or more may be awarded only after a call for public tenders.



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It should be noted that a contract for the supply of equipment includes a contract for the lease of equipment with an option to purchase.

In general, before awarding a contract to one of the tenderers, a municipality must ensure that the successful tenderer fulfills the following two fundamental criteria: the tenderer must comply with the requirements set forth in the specifications and must have submitted the lowest tender (or the tender having obtained the highest score, if the municipality has established a bid weighting system).

### Exceptions

Contracts required within the context of legal proceedings and involving the services of certain professionals such as lawyers, engineers, land surveyors, architects or chartered accountants may be entered into by private agreement.

The following contracts may also be entered into by private agreement:

- contracts for movable property or services related to cultural or artistic fields as well as computer software for educational purposes, and subscriptions;

- contracts involving the supply of equipment, materials or services for which a tariff is fixed or approved by the federal or provincial government or by one of their ministers or agencies, or contracts involving the supply of equipment or materials entered into between municipalities;
- expenses ordered by a mayor when he deems it necessary in case of irresistible force of such a nature as to imperil the life or health of the population or seriously damage the equipment of the municipality; and
- contracts entered into by a returning officer during the municipal election period.

Moreover, the Minister of Municipal Affairs may authorize a municipality to award a contract without calling for tenders or after calling for tenders by written invitation rather than calling for public tenders.

Contracts for \$25,000 and more whose purpose is to obtain energy savings for a municipality, where they involve both the providing of professional services and the performance of work or the supply of equipment or services, may be awarded only after written invitation to at least two contractors or two suppliers; however, where such contracts involve a total expenditure of \$100,000 or more, they may be awarded

without a call for public tenders. It should be noted that the government may adopt regulations to amend the rules applicable to such contracts.

As a further exception, an insurance contract awarded by tender for a period of less than five years may be renewed, without once again calling for tenders, for one or several terms which, added to the initial term, do not exceed five years.

### Publication of Calls for Tenders

A call for public tenders relating to a non-exempt contract involving an expenditure of \$100,000 or more must be published by means of an electronic tendering system and in a newspaper or a publication specialized in the field. In the case of a supply or services contract, the electronic tendering system to be used must be the one approved by the government, namely, the MERX system.

### Weighting System

In 1997, the legislature introduced the possibility for a municipality to establish a system of bid weighting and evaluating whereby each bid obtains a number of points based on the price as well as on the quality or quantity of goods, services or work, the delivery

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procedure, servicing, the experience and financial capacity required of the insurer, supplier or contractor, or on any other criteria directly related to the procurement.

In such a case, the call for tenders must mention all the evaluation criteria as well as the weighting methods. If the municipality opts for such a system, it may award the contract only to the person whose bid obtained the highest score.

The council may also opt to establish a qualification system or resort to a system of certification by an organization accredited by the Standards Council of Canada. In such a case, the call for tenders may stipulate that only suppliers of goods or services that are qualified or certified may submit a bid.

### **Professional Services**

The government must, by regulation, establish the rules applicable to contracts for professional services that can be provided only by certain professionals such as an engineer, land surveyor, architect, chartered

accountant, lawyer or notary (except, as previously mentioned, if the contract is required within the context of legal proceedings). Such regulation will also deal with contracts whose purpose is to obtain energy savings.

The rules to be established by the government may derogate in whole or in part from the general rules. The government may allow the use of a register of suppliers. It may establish classes of expense amounts and classes of territories in which the rules apply and it may determine different rules for those classes. It is important to note that the regulation may establish a rate schedule fixing the maximum hourly rate that may be paid by a municipality.

Certain professionals, including chartered appraisers and town planners, will not be affected by the regulation.

### **Conclusion**

This bulletin provides but a brief overview of the rules applicable to public tenders. For more details, readers should refer to the legislation. However, should you decide to wade through the maze of legislative provisions, you will undoubtedly see the wisdom of consulting your legal advisor, because, even for a municipal law specialist, these provisions have truly become a "patchwork" which is very difficult to piece together.

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