

Draft Regulation

An Act respecting the Corporation d'hébergement du Québec
(1999, c. 34)

Corporation d'hébergement du Québec — Contracts

Regulation respecting contracts of the Corporation d'hébergement du Québec

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting contracts of the Corporation d'hébergement du Québec, adopted by the Corporation d'hébergement du Québec, the text of which appears below, may be submitted to the Government for approval upon the expiry of 45 days following this publication.

The purpose of the draft Regulation is to establish the conditions concerning contracts entered into by the Corporation, to determine the cases in which a public call for tenders is required and to determine the conditions and procedure for the purchase and acquisition of goods and services.

Essentially, the purpose of the draft Regulation is to relax and simplify all the rules governing the awarding of contracts of the Corporation d'hébergement du Québec with respect to the construction of immovables as well as to provide the Corporation with rules concerning supply contracts and contracts for services entered into by the latter.

The draft Regulation is consistent with the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies and it contains only the rules the application of which is essential to ensure that suppliers receive fair and transparent treatment.

Further information may be obtained by contacting :

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Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to M^e Claude Gilbert.

The Corporation d'hébergement du Québec will forward those comments to the Minister of Health and Social Services, Minister of State for Health and Social Services, Minister responsible for the application of the Act respecting the Corporation d'hébergement du Québec, 1075, chemin Sainte-Foy, 15^e étage, Québec (Québec) G1S 2M1.

MICHEL SALVAS,
Chief Executive Officer
of the Corporation d'hébergement du Québec

Regulation respecting contracts of the Corporation d'hébergement du Québec

An Act respecting the Corporation d'hébergement du Québec
(1999, c. 34, a. 29; 2000, c. 8, a. 236)

CHAPTER 1 GENERAL

DIVISION 1 SCOPE

1. This Regulation applies to the following contracts entered into by the Corporation d'hébergement du Québec :

1) supply contracts, meaning contracts for the purchase or lease of movable property that may include the cost of installing, operating or maintaining that property;

2) construction contracts, meaning contracts entered into for construction work referred to in the Building Act (R.S.Q., c. B-1.1) for which the supplier must hold the licence required under chapter IV of the said Act;

3) service contracts including a contract of undertaking or a contract for services within the meaning of the Civil Code, a damage insurance contract or a cartage contract, excepting a construction contract, a contract for the hiring of a mediator designated by the Service de médiation de la Cour supérieure, or a contract referred to in the Politique d'intégration des arts à l'architecture et à l'environnement des bâtiments et des sites gouvernementaux et publics, made under Order in Council 955-96 dated 7 August 1996;

4) mixed contracts, meaning contracts comprising at least two of the following elements: supply, construction or services

2. This Regulation does not apply to the following contracts:

1) contracts entered into within the purview of a cooperation agreement financed in whole or in part by an international cooperation organization if the agreement contains contract rules;

2) contracts entered into in emergency situations in cases where the safety of persons or of property is at risk, except for the provisions of Section 82 hereinafter;

3) contracts entered into by the Corporation as a mandatory of a third party not subject to this Regulation.

Any contract entered into by the Corporation acting outside Quebec covering the purchase of goods or services is governed by the provisions of this Regulation subject to adapting them to the practices and conditions prevailing in the country or territory concerned.

DIVISION 2 DEFINITIONS

3. In this Regulation,

“intergovernmental agreement” means an agreement entered into by the Government of Québec and another government in order to promote access to public contracts; (*accord intergouvernemental*)

“auxiliary services contract” means a contract for services other than professional services; (*contrat de services auxiliaires*)

“professional services contract” means a contract for services that must be carried out by professionals or under their responsibility, considering that a professional is a person holding an undergraduate degree recognized by the ministre de l'Éducation, or the equivalent of such degree, and, in the case of exclusive practice, is a member of a professional order governed by the Professional Code (R.S.Q., c. C-26); (*contrat de services professionnels*)

“open contract” means a contract designed to meet the future needs of a group of users or the future needs of the Corporation, in which the latter undertakes to purchase or to have purchased certain goods or services, or to carry out construction work at predetermined prices or according to a predetermined method of setting prices, on specific terms and conditions, for a specific period and from time to time, as it may require; (*contrat ouvert*)

“Corporation” means the Corporation d'hébergement du Québec; (*Corporation*)

“establishment” means a public or private establishment governed by the Act for health and social services (R.S.Q. c. S-4.2); (*établissement*)

“supplier” means a legal or natural person or partnership, excepting a subsidiary of the Corporation, or a public body within the meaning of section 3 of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q., c. A-2.1), a department or body of another government, a band council, a fund for the benefit of confined persons set up in accordance with section 22.0.1 of the Act respecting correctional services (R.S.Q., c. S-4.01) or a non-profit legal person other than an adapted work centre; (*fournisseur*)

“amount of the contract” means the total financial involvement resulting from a contract, taking into account its renewals, or, in the case of an open contract, the estimated amount of the expenditure that may result therefrom; (*montant du contrat*)

“estimated amount of the contract” means the total estimated expenditure of the contract, except for a contract having a term of at least one year, renewable for a determined period, in which case it means the estimated expenditure of the initial contract, excluding the estimated expenditure for the renewal period; however, in the case of a service contract for an advertising campaign, the estimated amount of the contract shall not include media placement costs; (*montant estimé du contrat*)

“tender for services” means a proposal or an application submitted by a supplier with a view to obtaining a contract; (*offre de services*)

“standing offer” means a bid or a tender for services submitted by a supplier with a view to eventually obtaining specific supply, construction or service contracts either at predetermined prices or according to a predetermined method of setting prices, on specific terms and conditions, for specific periods and as required from time to time, comprising either an obligation to deliver the goods or services required whenever a user so requests, or a mere obligation to deliver them subject to their availability; (*offre permanente*)

“place of business” means a place where a supplier conducts his activities on a permanent basis, where his name clearly appears and which is open during the normal business hours; (*place d'affaires*)

“price” means a fixed price, a unit price, a rate, a percentage or a combination thereof; (*prix*)

“unsolicited offer” means an offer of professional services submitted by a supplier, on his own initiative, in order to meet or to try to meet the needs of the Corporation; (*proposition non sollicitée*)

“region” means an administrative region of Québec established under Order in Council 2000-87 dated 22 December 1987; (*région*)

“bid” means a tender submitted by a supplier, which consists in submitting solely a price for carrying out a contract; (*soumission*)

“rate” means the amount established on an hourly, daily, weekly or monthly basis for goods, services or persons assigned to the carrying out of a contract. (*taux*)

CHAPTER 2 AUTHORIZATION

4. The issuance of a call for tenders must be authorized by the board of directors of the Corporation when standing orders are invited and their terms and conditions do not provide that eventual specific contracts must be awarded, among the suppliers selected, to the supplier who, given the cost of transportation related to the delivery of the goods and services sought and, where applicable, their availability, submitted the lowest price or the best quality/price, except if the awarding procedure has already been authorized by the board of directors.

5. A contract must be authorized by the president and director general of the Corporation in the following cases:

1) the amount of the contract for professional services awarded in the cases provided in paragraph 5 or 7 of section 10 is \$100 000 or more, or of \$25 000 or more if the contract is with a natural person;

2) the term of the contract awarded or of the standard offers invited exceeds three years;

3) a single eligible offer is considered acceptable by the selection committee following the evaluation of the offers for services received;

4) the amount of the contract is for \$25 000 or more and a single eligible offer has been received;

5) the amount of a contract awarded to a non-profit legal person, other than an adapted work center, is:

a) equal to or exceeds \$500 000;

b) equal to or exceeds \$100 000 but is lower than \$500 000 except when the Corporation has proceeded by way of call for tenders by invitation;

6) the contract awarded to a contractor other than a supplier does not include a clause whereby a maximum of 10% of the amount of the contract may be used to remunerate activities subcontracted out;

7) the call for tenders for services provides a remuneration established on the basis of a rate and this remuneration is estimated at an amount of \$100 000 or more, except if the contract is subject to a rate set in accordance with an Act or approved by the Government or by the Conseil du trésor and if the estimated amount of this contract is lower than \$500 000.

CHAPTER 3 PRIOR CONDITIONS TO CONCLUDING CONTRACTS

DIVISION 1 QUALITY CONTROL

6. A contract, except where referred to in paragraphs 4 to 8, 11, 12, 15 to 17, 23 and 24 of section 10, may not be entered into with a supplier or group of businesses acting as a supplier unless that supplier or the business in that group carrying out the contract holds a registration certificate issued by the Standards Council of Canada or by an accrediting agency recognized by it, according to which it has a quality control system that covers the goods and services or construction work in question and complies with the ISO standard listed in Schedule I, in the following cases:

1) the main object of the contract is the supply of goods or services pertaining to a specialty and for an estimated amount listed in that Schedule with regard to estimated amount indicated therefor;

2) it is a construction contract of an amount estimated at \$500 000 or more.

7. Notwithstanding section 6, when the territory involved in calling for tenders has fewer than three suppliers holding an ISO registration certificate specified in Schedule I, the call for tender may be addressed to all the suppliers working in that field. In such case, when a tender is submitted by a supplier holding an ISO registration certificate specified in the Schedule, the lowest eligible tender is determined after subtracting from that supplier's tender 10% of his submission price.

DIVISION 2 CALL FOR TENDERS

8. In this Regulation “call for tenders” means a procedure for competitive tendering by several suppliers, inviting them to submit a bid or an offer of services.

9. Subject to section 10, a contract may not be entered into unless a call for tenders was previously issued, except where the amount of the contract is less than:

- 1) \$5 000 for a supply contract;
- 2) \$10 000 for an auxiliary services contract;
- 3) \$25 000 for a professional services contract or a construction contract.

10. A call for tenders is not required in any of the following cases:

1) a contract is awarded to one of the suppliers on the list of suppliers whose standing offers have been accepted;

2) a contract is awarded to a contracting party other than a supplier with the meaning of section 3;

3) there exists an unforeseen emergency situation and the products, services, or the construction work cannot be obtained in time by proceeding with a call for tenders;

4) it is a contract for maintenance or repair of specialized equipment which must be done by the manufacturer or his exclusive representative;

5) there is only one supplier with a place of business in Québec or, where an intergovernmental agreement applies, in Québec or in a province or territory set out in the agreement, who was found, after an extensive and documented search to meet the specific requirements and to have the qualifications necessary to carry out the contract, or, there is no qualified supplier in the territory in question;

6) entering into a contract with a supplier other than the supplier who provided movable property, a service or construction work, could void existing guarantees applying to the movable property, service or work;

7) a supplier holds a copyright or right of ownership giving him a significant advantage over other potential suppliers and there can be no competition since only one supplier is able to submit a tender at an economically attractive price;

8) a contract is awarded to the only possible supplier considering that a person’s exclusive right such as a copyright or a right based on a license or a patent, or else the artistic or museological value of the goods or services must be complied with;

9) the contract is for the purchase of books or of a document deposited in accordance with Division VI of the Act respecting the Bibliothèque nationale du Québec (R.S.Q., c. B-2.1);

10) the contract is a construction contract for less than \$500 000 involving both the making and the laying of bituminous compound;

11) it is a contract awarded within the scope of a partnership agreement relating to the socio-sanitary sector as provided in section 6 of the Act respecting the Corporation d’hébergement du Québec (1999, c. 34) and this agreement, previously approved by the Board of Directors of the Corporation contains particular provisions for entering into contracts as well as a financial participation by the partner who is not subject to the present Regulation;

12) a construction contract or auxiliary services contract is given to a public utility firm referred to in section 98 of the Charte de la langue française (R.S.Q., c. C-11) within the scope of its activities;

13) the contract is for legal, financial or banking services;

14) the contract is a service contract for the hiring of an investigator, a conciliator, a negotiator or an arbitrator, or of an assessor or an expert by reason of a conflict, saving and excepting when an intergovernmental agreement applies;

15) A professional services contract is given to the original designer of plans and specifications involving the adaptation, alterations or supervision thereof and the original construction plans and specifications are used again;

16) a professional services contract is given, for the supervision of the work, to the designer of the plans and specifications;

17) a professional services contract is given to the designer of the plans and specifications or to the person who supervised the work, as part of defending the interests of the Corporation with regard to a claim made in courts of ordinary jurisdiction or in connection with a mediation or arbitration procedure;

18) a services contract related to training activities or consulting services is awarded to a private educational institution dispensing the educational services referred to in paragraphs 4 and 8 of section I of the Act respecting private education (R.S.Q., c. E-9.1);

19) a professional services contract related to study or research is related to an educational institution at the university level referred to in section 1 of the Act respecting educational institutions at the university level (R.S.Q., c. E-14.1);

20) it is an auxiliary services contract subject to a rate set under an Act or a rate approved by the Government or by the Conseil du trésor, except where an inter-governmental agreement applies;

21) it is a travel services contract for an amount under \$100 000;

22) the Corporation makes the media placement directly;

23) it is a contract for construction work on an immovable property or part of same leased by the Corporation and the contract is performed by the lessor of the immovable property;

24) it is a supply or professional services contract concerning matters of a confidential nature and it is reasonable to believe that should they be divulged within the framework of calling for tenders, this would compromise the confidential character of the said information, cause a disruption of the economy or in some other fashion harm the public interest.

CHAPTER 4 SPECIFIC REGULATIONS FOR CERTAIN CONTRACTS

DIVISION 1 CONSTRUCTION CONTRACTS

11. Where it is decided, after opening the bids, not to go ahead with a public call for tenders, the lowest bidder is entitled to receive, as compensation and final settlement for expenses incurred, the amount of:

1) \$2 000 where the estimated amount of the contract is equal to or greater than \$500 000 but is less than \$1 000 000;

2) \$5 000, where the estimated amount of the contract is equal to or greater than \$1 000 000.

12. Acceptance of the work by the Corporation shall be made by means of a notice of acceptance with or without reservations.

13. Once the supplier's contract has been partially completed, the Corporation may accept, in accordance with sections 14 and 15, any completed portion of the work, provided that the supplier consents thereto and guarantees free and safe access to the portions put into use.

14. The notice of acceptance with reservation is a document signed by the representative, duly authorized thereto by the Corporation, certifying that most of the work has been completed, that the remaining work could not be completed owing to contingencies beyond the supplier's control and that the value of work to be corrected other than work to be completed, is equal to or less than 0.5% of the amount of the contract.

The notice shall be given with a list of the work to be completed or corrected, as the case may be.

15. The notice of acceptance without reservation is a document signed by the representative authorized thereto by the Corporation, certifying that the work is ready for its intended use and that, where applicable, all the work on the list attached to the notice of acceptance with reservation has been completed or corrected as the case may be.

DIVISION 2 MIXED CONTRACTS

16. Subject to sections 17 to 26, a mixed contract must be entered into in accordance with the rules applicable to the object comprising the major part of the estimated amount of the contract.

If the contract includes the cost of installing, operating or maintaining property, those costs shall be considered as elements included in the part related to supply.

17. The provisions of sections 20 to 26, 54 and 55 do not apply to a mixed construction and services contract.

18. A contract that includes both the purchase of services and the carrying out of construction work must be entered into for a fixed price. It may, however, include, in an ancillary fashion, a unit price, a rate, a percentage or a combination thereof.

19. Where a call for tenders is required with a view to awarding a mixed construction and services contract, tenders shall be invited through a call for tenders for services.

DIVISION 3

MIXED CONTRACTS RELATED TO ENERGY EFFICIENCY

20. This Division may apply to any contract designed to produce savings arising from improvements in energy efficiency which includes the hiring of professional services as well as the carrying out of construction work wherein the cost is covered by the resulting savings. The contract may also provide for the purchase of auxiliary goods and services.

21. Paragraph 7) of section 5 and sections 16 to 19, 54, 55, 62, 64, 65, 67 and 74 do not cover a mixed contract related to energy efficiencies when the present Division applies.

22. Tenders shall be invited by a call for tenders for services. Tenders for services shall include a list of the energy-saving measures proposed by the supplier as well as an evaluation of the savings resulting therefrom and of the costs incurred by the project.

23. The evaluation chart must include a minimum of 4 criteria for the evaluation of tenders for services of which at least one must concern the evaluation of the proposed prices. Each criterion must be weighed according to its importance for the carrying-out of the contract without, however, exceeding 30% of the weighting of all the criteria.

24. The selection committee shall determine the financial value of each tender for services it has deemed acceptable. An acceptable offer of services is one that earns the minimum number of points required in the documents calling for tenders when it is evaluated in respect of the "quality" criterion.

The financial value of a tender for services shall be the net discounted savings resulting from the project, that is, the current savings less the current cost incurred by the project.

25. The selection committee shall weigh the financial value it has set on each tender for services by multiplying that value by the percentage obtained for each offer respectively in connection with the quality criterion.

26. The contract shall be awarded to the supplier whose eligible and acceptable offer has achieved the highest weighted financial value. In case of identical results, the contract shall be awarded to the supplier whose offer has the highest financial value. In case of a double tie between the weighted financial value and the financial value, the contract shall be awarded by drawing lots between those suppliers.

DIVISION 4

UNSOLICITED PROPOSALS

27. When the Corporation receives an unsolicited offer, it must:

1) ensure that it does not duplicate a project it has already started up, that it falls within its overall mission and that it directly contributes to achieving one of its objectives;

2) evaluate its level of quality by considering, in particular, its feasibility, profitability and timeliness.

28. Following the evaluation of an unsolicited offer, the president and director general shall notify the supplier with respect to the admissibility of the offer.

29. The Corporation must, to ensure the carrying out of an unsolicited offer that earned a favorable notice in accordance with section 28, proceed as follows:

1) when the unsolicited offer is not precise enough to enable potential suppliers to propose carrying it out at a fixed price, the Corporation shall award to the supplier who submitted the offer a contract designed to allow him to clarify the offer, provided that the contract is for less than \$100 000 and that the supplier shall guarantee that his offer will become precise enough to be carried out at a fixed price;

2) when the offer is or becomes precise enough to enable potential suppliers to propose carrying it out at a fixed price, the Corporation shall hold a call for tenders for services.

30. The call for tenders referred to in paragraph 2) of section 29 must require that suppliers submit a fixed price in order to obtain the contract. Furthermore, the lowest eligible offer shall be determined after subtracting 7% from the price submitted by the supplier having submitted the unsolicited offer which earned a favorable notice, provided that the supplier did not have to clarify his proposition pursuant to paragraph 1) of section 29.

CHAPTER 5

CALLS FOR TENDERS

DIVISION 1

PRINCIPLES

31. Where a call for tenders is required, it must be held either by a public call for tenders, by a regionalized public call for tenders or by an invitation to tender.

32. A public call for tenders may be used in all cases. Moreover, a public call for tenders shall be used in the following cases :

- 1) where the estimated amount of the supply contract equals or exceeds \$25 000;
- 2) where the estimated amount of the service or construction contract equals or exceeds \$100 000;
- 3) in order to draw up a list of suppliers from whom some standing offers will be retained;
- 4) in order to draw up a permanent list of suppliers, within the scope of a prior selection.

33. The regionalized public call for tenders is used when the estimated amount of the service or construction contract equals or exceeds \$25 000 but is less than \$100 000.

34. An invitation to tender shall be held in the following cases :

- 1) when the estimated amount of the supply or auxiliary services contract amounts to less than \$25 000;
- 2) when the Corporation holds a call for tenders from suppliers registered in the permanent list of suppliers or in a particular list of suppliers, drawn up as a result of a prior selection.

DIVISION 2 TYPES OF CALLS FOR TENDERS

35. Public calls for tenders are addressed to all suppliers having a place of business in Québec or, when an intergovernmental agreement is involved, in Québec or in a province or territory included in that agreement.

36. The regionalized public call for tenders is addressed to all suppliers having a place of business in the region where the contract will be carried out.

37. When a call for tenders by invitation is used, the Corporation invites at least three suppliers, which it has chosen, having a place of business in Québec, or, failing that, the only two suppliers having a place of business in Québec.

The preceding provision does not apply in those cases where the Corporation has held a prior selection of suppliers, in which event the invitation is addressed to all the suppliers registered on the permanent list of suppliers or on the particular list of suppliers.

DIVISION 3 PUBLIC CALLS FOR TENDERS

38. The public call for tenders or the regionalized public call for tenders is held by means of a notice circulated in an electronic bulletin board system. The Corporation, however, reserves the right to also publish the notice by way of any other medium of distribution.

39. When the type of solicitation for a contract estimated at under \$25 000 is a call for bids, the invitation and the bids may be made verbally. A written record of the initiatives taken and the things done must, however, be kept.

DIVISION 4 PRIOR SELECTION

40. This Division applies when the Corporation makes a prior selection of suppliers with a view to setting up a permanent list of suppliers able to respond to later calls for tenders or a particular list of suppliers able to respond to one or to any number of later specific calls for tenders.

41. When it has drawn up a permanent list of suppliers, the Corporation shall hold, at least once a year, a public call for tenders in order to allow suppliers who have not already done so to register on the list.

Moreover, a supplier may register at any time on the list drawn up so long as he meets the conditions of admissibility laid down in the most recent call for prior selection of suppliers.

42. Sections 54, 55 and 64 to 79 do not apply to a call for tenders for drawing up a permanent list or a particular list of suppliers within the scope of a prior selection in accordance with this Division.

43. The tenders for services are invited by calls for tenders excluding price.

44. The selection committee shall retain those offers having obtained at least the minimum number of marks required in the documents calling for tenders, which minimum shall not be less than 60%.

A minimum number of points may be required with regard to any of the criteria or to groups of criteria laid down in the documents calling for tenders.

45. Where the Corporation arranges to make a prior selection of suppliers, within the scope of a call for tenders, it shall hold itself to the following obligations :

1) specify, in the documents calling for tenders used in the prior selection of suppliers, in what cases the list of suppliers will be used, the terms and conditions of its use, as well as all the qualification criteria which suppliers must meet in order to be registered on this list and to continue to be registered thereon;

2) confirm in writing to suppliers who request to be registered on the list of suppliers that their name has been so registered or, failing that, tell them what qualification criteria they failed to meet.

46. Where the Corporation uses the list of suppliers within the scope of a call for tenders, it shall provide, to any supplier registered on the list, the notice of call for tenders, and, as the case may be, the documents calling for tenders.

DIVISION 5 ADMISSIBILITY AND ELIGIBILITY OF TENDERS

47. The Corporation shall mention, in the documents calling for tenders, the conditions of admissibility governing offers, those regulating the awarding of contracts, the rules on receiving and opening tenders, on eligibility and those applying to evaluating tenders, including the evaluation criteria retained, as well as the applicable weighting and the use of the preferential margin set in sections 7 and 30, where applicable.

Where the call for tenders is held in order to draw up a list of suppliers whose permanent tenders will be retained, the documents calling for tenders shall also make clear the terms and conditions to be met by a supplier so that he may be registered on the list and the terms and conditions under which contracts will be awarded.

48. The rules governing eligibility of tenders must indicate these cases where the tender shall be automatically rejected:

- 1) some required document is missing;
- 2) the signature of an authorized person is missing on a document requiring such signature;
- 3) any crossing or correction made to the prices submitted and not initialed by the authorized person, as the case may be;
- 4) any conditional or restrictive offer;
- 5) failure to respect the location, date and deadline, set for receiving offers;

6) failure to meet any other condition stipulated as essential in the instructions to suppliers.

49. Only tenders submitted by suppliers having the qualifications, authorizations, permits, licenses and registration required, and having a place of business in Québec, or in the case of an intergovernmental agreement, in Québec or in a province or a territory covered by that agreement, shall be considered.

50. The Corporation may refuse to consider a tender from a supplier who, within two years preceding the date when tenders are received:

1) failed to, or refused to follow up on a tender submitted to the Corporation or on a contract entered into with it, saving and excepting a case where the Corporation, due to such omission or refusal, did recover the security guarantee which it had required;

2) was cited in an unsatisfactory performance report in accordance with chapter 8, if the nature of the contract is the same;

3) was found responsible in a judgment following legal proceedings taken out by the Corporation due to the supplier's failure to execute a contractual obligation.

DIVISION 6 NOTICE OF CALL FOR TENDERS

51. A notice calling for tenders shall, among other things:

1) briefly describe the goods, the services or the construction work required;

2) indicate where to obtain the documents calling for tenders; if the call for tenders is to be published otherwise than by the electronic bulletin board system, or if these documents are not to be transmitted by the system server, advise how to obtain the documents; and state:

3) where to obtain information;

4) where to forward the tenders;

5) the deadline (date and hour) for submitting tenders;

6) the date, hour and location set for a public opening of tenders, as the case may be;

7) whether the contract in question is subject to an intergovernmental agreement, or, moreover, if it is so subject, whether it is an exception thereto, and, as the case may be, the title of the agreement involved.

The notice must stipulate that the Corporation undertakes to accept neither the lowest nor any bid received.”

DIVISION 7

DEADLINES FOR TENDERING

52. The deadline for receiving tenders shall be calculated from the date the call for tenders is first published and it may not be less than 15 days when the call for tenders involves a contract subject to an intergovernmental agreement.

53. Any addenda shall be forwarded to the suppliers to whom tender documents have been given. If the addenda is such that it may affect the price of the prices to be submitted by the suppliers, it must be sent out at least 7 days before the deadline for receiving tenders. To ensure that this 7 day delay is respected, the initial deadline shall, as required, be extended as a result thereof.

However, if the initial delay for receiving tenders is less than 7 days, any addenda that may influence the price must be sent out at least within a delay equivalent to the initial delay for receiving tenders. The initial deadline shall be extended accordingly, as the case may be.

CHAPTER 6

SOLICITING OF TENDERS, EVALUATION OF TENDERS AND AWARDING OF CONTRACTS

DIVISION I

SOLICITING OF TENDERS

54. Tenders shall be solicited by calls for tenders for services or by calls for bids in the following cases:

1) when a call for tenders is required to award a contract;

2) in order to draw up a list of suppliers whose standing offers will be accepted with a view to awarding contracts.

55. A price must be solicited where a call for tenders for services is held.

Notwithstanding the first paragraph, a price does not have to be solicited in the following cases:

1) in the case of a contract for services intended to carry out a publicity or advertising campaign;

2) where there is a rate set under a law or approved by the Government or by the Conseil du trésor and when the contract in question is not subject to an intergovernmental agreement.

Notwithstanding the first and second paragraphs, a price may not be solicited in the case of a professional services contract related to architecture, engineering, soil and materials engineering or forest engineering.

DIVISION 2

EVALUATION OF TENDERS FOR SERVICES

§1. Selection committee

56. The evaluation of tenders for services shall be made by a selection committee made up of a secretary and of at least three members appointed by the Corporation, at least one of which shall be from outside the Corporation.

57. The evaluation of tenders for professional services related to architecture, civil engineering or to soils and materials engineering required in connection with a project to erect a building to be occupied by an establishment is done, where the estimated amount of the contract is less than \$100 000, by a selection committee comprised of a secretary and a minimum of 3 members appointed as follows:

1) 2 members appointed by the Corporation of whom at least one is from a department or from a public body within the meaning of section 3 of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q. c. A-2.1) other than the Corporation or the establishment involved;

2) 1 member appointed by the establishment concerned.

In those cases where the committee consists of more than three members, the additional members are appointed in equal number by the establishment concerned and by the Corporation.

58. The evaluation of tenders for professional services related to architecture, civil engineering or to soils and materials engineering required in connection with a project to erect a building to be occupied by an establishment is done, where the estimated amount of the contract is equal to or exceeds \$100 000, by a selection committee comprised of a secretary and a minimum of 5 members appointed as follows:

1) 3 members appointed by the Corporation;

2) 2 members appointed by the establishment concerned.

For each of paragraphs 1) and 2), at least one of the members appointed shall be one member from a department or from a public body within the meaning of sec-

tion 3 of the Act respecting access to documents held by public bodies and the protection of personal information (R.S.Q. c. A-2.1.) other than the Corporation or the establishment concerned.

In those cases where the committee consists of more than five members, the additional members are appointed in equal number by the establishment concerned and by the Corporation.

59. The president and director general or his designated representative arranges for the rotation of the persons he designates to sit on these committees.

60. The Corporation reserves the right to designate one or more observers who shall then act merely in an advisory capacity.

The Corporation may, until such time as the committee's meetings have begun, replace any member unable to participate in the committee's activities. In the event that the committee's meetings have begun and any one member becomes unable to so participate, the Corporation reserves the right to dissolve the committee.

§2. *Selection procedure*

61. Members of the selection committee shall evaluate the "quality" aspect of eligible tenders by means of the chart developed by the Corporation.

62. The chart shall comprise a minimum of four criteria to evaluate tenders for services in light of the "quality" aspect.

Each criterion must be weighted on the basis of its importance for carrying out a contract. The total weighting of the criteria must be equal to 20 and no criterion may have a weighting greater than 6.

63. The final score given to a tender for services is the sum total of the marks obtained with regard to each of the criteria, which marks are arrived at by multiplying the mark obtained from the selection committee by the weighting applying thereto.

A minimum number of points may be required with regard to any criterion or to any group of criteria laid down in the documents calling for tenders. As the case may be, a tender for services which does not reach that minimum shall be ignored.

64. The evaluation of tenders according to the established criteria shall be made without the tendered price, or bid, where required, being known to the members of the selection committee. The tendered price or bid shall be submitted under separate cover.

65. Where the call for tenders for services does not solicit a price, the selection committee shall determine the supplier obtaining the highest score.

66. Where the call for tenders for services solicits a price, the selection committee shall retain those tenders obtaining the highest scores among the tenders deemed acceptable up and including a maximum of 5 tenders. A tender for services is acceptable if it earns the minimum number of points required by the documents calling for tenders, when evaluated in light of the "quality" aspect, which score shall not be less than 60%.

In those cases where the number of tenders for services retained in accordance with the first paragraph is less than 3 and the minimum number of points required in the documents calling for tenders is higher than 60%, the committee shall deem acceptable the tenders for services, if any, obtaining at least 60%, the committee restricting itself to those tenders obtaining the highest scores, in order to retain 5 in all.

67. Prices submitted by those suppliers who tendered acceptable tenders for services in light of the "quality" criterion, in accordance with section 66, shall be considered in accordance with one of the following methods:

1) where the call for tenders indicates that evaluation of tenders shall be made in accordance with a price/quality ratio, the supplier whose tender is acceptable and who submitted the lowest price or deemed so pursuant to sections 7 and 30, taking into account, as the case may be, the approximate comprehensive price, shall be awarded a mark of 100 points under the "price" aspect. The remaining suppliers, whose offers are acceptable, shall lose, counting down from the 100 mark, a number of points corresponding to the percentage of difference between their price and the price of the lowest tender, to a limit of 10 points; the supplier whose offer exceeds the lowest offer by more than 10 points shall be eliminated.

For each of the acceptable tenders for services, the marks earned in light of the "quality" criterion shall be added to those earned under the "price" criterion. The selection committee shall determine which supplier obtained the highest score;

2) where the call for tenders indicates that evaluation of tenders shall be made by considering first their quality and subsequently the price submitted, the selection committee shall determine, from among the suppliers who submitted an acceptable tender for services, which supplier submitted the lowest price offer or the one deemed the lowest, pursuant to sections 7 and 30, taking

into account, as the case may be, the approximate comprehensive price.

Whichever evaluation method is used, the price offer connected to an unacceptable tender for services shall not be considered and the envelope containing such price shall be returned unopened.

68. Where the call for tenders provides that the evaluation shall be made in two stages, the first stage shall consist of a call for tenders for services without price by which the selection committee retains a certain number of suppliers who will be invited to proceed to the second stage. The number of suppliers to be retained shall have been set down in the documents calling for tenders and the suppliers invited to submit new tenders for services shall be those who earned the highest scores.

69. It is not objectionable for two or more suppliers to obtain the same score. However, in the case of section 66 when identical scores are obtained by two or more suppliers vying to fill the fifth position, the selection committee shall proceed by a drawing of lots among those suppliers.

70. The resulting evaluation of the file of a supplier tendering for services shall be sent to him within 15 days following the signing of the contract. The information forwarded shall include:

- 1) the rank and score obtained by the supplier as well as, where applicable, an explanation of that score, and, with regard to a contract referred to in section 20, the weighted financial value of his offer for services;

- 2) the number of eligible and ineligible suppliers;

- 3) the name of the successful tenderer, the score he obtained and, where applicable, the price submitted, or, in the case of a contract referred to in section 20, the weighted financial value of the tender for services.

The names of the members of the selection committee shall be forwarded to any supplier so requesting.

DIVISION 3 AWARDING OF CONTRACTS

71. If two or more identical tenders are submitted, the selection committee shall award the contract by a drawing of lots among those suppliers.

However, in the cases covered under sections 74 and 75, in the event of identical results, the contract shall be awarded to the supplier who submitted the lowest fixed price or approximate total price, or so deemed in accor-

dance with section 30, as the case may be. If the tenders for services as well as the prices submitted are identical, the contract shall be awarded by a drawing of lots among the suppliers in question.

72. In the case of a call for bids, the contract shall be awarded to the supplier who submitted the eligible bid with the lowest fixed price or approximate total price, as the case may be, as calculated in accordance with the method set out in the tender documents or to the supplier deemed to have submitted the lowest price pursuant to section 7. The price specified in the contract shall not exceed the price submitted.

73. In the case of a call for tenders for services not soliciting a price, the contract shall be awarded to the supplier whose eligible tender obtained the highest score.

74. Within the context of a call for tenders for services where a price was solicited, and where the evaluation was made in accordance with a price/quality ratio, the contract shall be awarded to the supplier whose eligible tender obtained the highest score corresponding to the total points to be earned pursuant to the "quality" aspect, and, regarding the "price" aspect, in accordance with paragraph 1) section 67. The price specified in the contract shall not exceed the price submitted.

75. Within the context of a call for tenders for services where a price was solicited, and where the evaluation was made by considering first quality and subsequently the price submitted, the contract shall be awarded to the supplier who tendered the eligible offer with the lowest price, in accordance with paragraph 2) of section 67. The price specified in the contract shall not exceed the price submitted.

76. The Corporation may, following a call for tenders, negotiate the price with the sole supplier who submitted an eligible bid or an eligible and acceptable tender for services, when the price varies considerably from the initial estimate.

77. The Corporation may, following a call for tenders by invitation, negotiate the price with the supplier who submitted the lowest eligible bid or who obtained the highest score for his eligible and acceptable tender for services, when the price varies considerably from the original estimate.

Should the negotiation fail to result in a signed contract, the Corporation may hold a new public call for tenders.

78. Where the Corporation has drawn up a list of suppliers from whom standing offers have been accepted,

it shall, pursuant to the terms and conditions governing the documents calling for tenders, award any contract referred to in the said list of suppliers, to one or another of the suppliers appearing on the said list.

79. Notwithstanding sections 71 to 78, the Corporation may, for good and serious reasons, specified in a resolution adopted by the board of directors of the Corporation, set aside the lowest eligible tender, or the one most financially advantageous, and award the contract to another supplier whose tender is eligible.

CHAPTER 7

CONDITIONS FOR THE ADMINISTRATION OF CONTRACTS

DIVISION 1

SUPPLEMENTS

80. The Corporation may grant a supplement over and above the amount payable for carrying out a contract in the following cases:

- 1) a modification of the contract is required to ensure the carrying out of the project;
- 2) there is a variation in the amount to which an already established percentage must apply or a variation in a quantity for which a unit price or a rate was agreed upon;
- 3) salaries to be paid are modified in accordance with a law or an Order in Council.

81. A supplement to a contract contemplated under paragraph 1) of section 80 or a supplement attributable to a variation in the time period set down in a contract wherein the remuneration is established on the basis of a rate, shall need to be authorized by the president and director general in the following cases:

- 1) the initial amount of the contract is below \$100 000 and the supplement or the aggregate of the supplements adds up to 25% of the amount of the contract;
- 2) the initial amount of the contract is \$100 000 or greater and the supplement or the aggregate of the supplements exceeds the higher of these two following values, either \$25 000, or 10% of the amount of the contract.

DIVISION 2

PAYMENT

82. No payment for the performance of a contract entered into in accordance with paragraph 2 of section 2 and paragraph 3 of section 10 shall be made without the

authorization of the president and director general of the Corporation.

83. No payment shall be made with respect to a contract entered into in contravention of the provisions of this Regulation, without submitting the matter to the board of directors.

CHAPTER 8

EVALUATION OF THE PERFORMANCE OF SUPPLIERS

84. The Corporation shall issue a performance report whenever a contract's value is equal to or exceeds \$100 000.

85. The evaluation shall be recorded in a performance report within 60 days following the end of a contract, except in the case of a construction contract for which the period must be calculated from the expiry date of the performance security or, failing such security, the date of the completion of the work. Notwithstanding the foregoing, for a contract of a repetitive nature or involving several successive deliveries, the performance report may be made before the end of the contract.

86. The Corporation shall forward to the supplier a copy of any unsatisfactory report concerning him.

87. The supplier may, within 30 days following receipt of an unsatisfactory performance report, convey to the Corporation any comment he may have in that regard.

88. Within 30 days following the term set out in section 87, or within 30 days following receipt of the supplier's written comments, as the case may be, the president and director general shall uphold or revoke the evaluation made and shall inform the supplier accordingly. Should these delays not be respected, the report shall be deemed to be satisfactory.

CHAPTER 9

REPORT

89. Every year, the Corporation shall file with the minister responsible for applying the Act a report covering in a general way all the contracts entered into, stating their number and the aggregate amount involved therefor, their regional distribution as well as any other information it may deem appropriate. It shall attach a list of those contracts for which the authorization of the president and director general or that of the board of directors was needed hereunder.

CHAPTER 10 TRANSITORY AND FINAL PROVISIONS

90. The exercise of the powers accorded to the board of directors of the Corporation pursuant to this Regulation may be delegated according to law.

91. The procedures for awarding contracts undertaken before the present Regulation comes into force shall go ahead in accordance with the provisions in force at the commencement of the award process.

92. Any contract currently in force at the time the present Regulation comes into force is extended and proceeded with in accordance with this Regulation unless otherwise provided for in the said current contract, in which case the contractual clause shall prevail.

93. This Regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.

SCHEDULE I (s.6)

QUALITY CONTROL

1) The specialties and conditions of application related to contracts for supply or services for which a supplier must hold an ISO registration certificate are the following:

Specialty	Estimated amount	Standard required
SUPPLYING:		
Furniture:		
• Integrated furniture, composed of electrifiable removable partitions and of furniture components hung on the partitions or self-supporting	≥ \$25 000	ISO 9002
• Metal cabinets, bookcases and display units	≥ \$25 000	ISO 9003
• Chairs and armchairs complying with specification DGA-S-7110-5000	≥ \$25 000	ISO 9003

Specialty	Estimated amount	Standard required
• Side filing units	≥ \$25 000	ISO 9003
• Standardized office and office automation furniture, made from wood particle boards, with a stratified or melamine finish, complying with DGA-S-7110 specifications series: 0100, 2000 and 300	≥ \$25 000	ISO 9003
PROFESSIONAL SERVICES:		
Services related to building construction:		
• Acoustics	≥ \$50 000	ISO 9002
• Building engineering	≥ \$50 000	ISO 9001
• Mechanical and electrical building engineering	≥ \$50 000	ISO 9001
• Project management	≥ \$50 000	ISO 9002
• Preventive maintenance system * (Note 1)	≥ \$50 000	ISO 9002
Soil and material engineering:		
• Characterization testing of granulates	≥ \$25 000	ISO 9002
• Performance testing of granulates	≥ \$25 000	ISO 9002
• Structural inventory of roads	≥ \$25 000	ISO 9002
• Road mechanics	≥ \$25 000	ISO 9002
• Soil mechanics	≥ \$25 000	ISO 9002
• Soil mechanics and cement concrete quality control	≥ \$25 000	ISO 9002
• Soil recognition (pedological studies)	≥ \$25 000	ISO 9002
• Metal quality control	≥ \$25 000	ISO 9002
• Soil quality control	≥ \$25 000	ISO 9002
• Bituminous concrete quality control	≥ \$25 000	ISO 9002
• Cement concrete quality control	≥ \$25 000	ISO 9002

Specialty	Estimated amount	Standard required
• Environment:		
• Characterization of potentially contaminated sites	≥ \$25 000	ISO 9002
• Environmental impact study	≥ \$25 000	ISO 9001
• Restoration of contaminated sites	≥ \$25 000	ISO 9001
Information technologies:		
• Computer systems development	≥ \$100 000	ISO 9001
• Hardware and software counseling	≥ \$200 000	ISO 9001
• Computer systems maintenance	≥ \$200 000	ISO 9001
• Management of processing centers	≥ \$200 000	ISO 9002
• Management and planning information technologies	≥ \$200 000	ISO 9001
• Computer systems development	≥ \$200 000	ISO 9001
• Computer security	≥ \$200 000	ISO 9001

AUXILIARY SERVICES

Printing:

• Cheque form printing	≥ \$25 000	ISO 9002
• Document printing and reproduction:		
• Quality level “Information” or “Office”	≥ \$50 000	ISO 9003
• Quality level “Fine” or “Prestige”	≥ \$25 000	ISO 9002

2) The specialties and conditions of application related to construction contracts for which a supplier must hold an ISO registration certificate are the following:

Specialty	Estimated amount	Standard required
BUILDING CONSTRUCTION:		
• For the commercial, industrial and institutional sectors	≥ \$500 000	ISO 9002

* (Note 1) **Preventive maintenance systems:** development of planned maintenance programs for mechanical and electrical systems of a building.

Draft Regulation

An Act respecting the Régie de l'énergie (R.S.Q., c. R-6.01)

Régie de l'énergie**— Conditions and cases where authorization is required**

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie, the text of which appears below, may be submitted to the Government for approval upon the expiry of 45 days from this publication.

The purpose of the Regulation is to determine the cases and conditions where authorization is required from the Régie de l'énergie for the carrier of electric power or the distributors of electric power or natural gas to carry on certain activities, in particular, to acquire, construct or dispose of immovables or assets for energy transmission or distribution.

Further information on the draft Regulation may be requested from the secretary of the Régie de l'énergie, tour de la Bourse, 800, place Victoria, bureau 255, C.P. 001, Montréal (Québec) H4Z 1A2; tel. (514) 873-2452; fax: (514) 873-2070.

Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the secretary of the Régie. The Régie will then review the comments and forward them to the Minister of Natural Resources, who is responsible for the administration of the Act respecting the Régie de l'énergie.

M^e VÉRONIQUE DUBOIS,
Secretary of the Régie de l'énergie

Regulation respecting the conditions and cases where authorization is required from the Régie de l'énergie

An Act respecting the Régie de l'énergie (R.S.Q., c. R-6.01, s. 114, 1st par., subpar. 6 and 2nd par.; 2000, c. 22, s. 51)

1. Authorization from the Régie de l'énergie is required:

(1) to acquire, construct or dispose of immovables or assets for energy transmission or distribution purposes as well as to extend, modify or change the use of the