

Decisions

Decision 1178-2, 27 November 2003

Public Protector Act
(R.S.Q., c. P-32)

CONCERNING the Regulation respecting contracts of the Public Protector adopted under the Public Protector Act

WHEREAS, in Decision 0640-2 dated 17 November 1993, the Office of the National Assembly approved the Regulation respecting contracts of the Public Protector;

WHEREAS the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies has been in force since 1 October 2000 under Order in Council 961-2000 dated 16 August 2000;

WHEREAS that Regulation does not apply to the Public Protector;

WHEREAS section 35.2 of the Public Protector Act (R.S.Q., c. P-32) provide that the Public Protector may, by regulation, determine the terms of the contracts he is authorized to conclude;

WHEREAS the same section of that Act provide that the regulation comes into force on the date of its approval by the Office of the National Assembly and that it shall be published in the *Gazette officielle du Québec*;

WHEREAS the Public Protector adopted the Regulation respecting contracts of Public Protector on November 21 2003;

WHEREAS it is expedient that the Office of the National Assembly approve that regulation;

IT IS THE DECISION OF THE OFFICE

THAT the Regulation respecting contracts of the Public Protector, attached hereto, is approved;

THAT this Decision replaces Decision 0640-2 dated 17 November 1993;

THAT this Decision and the Regulation respecting contracts of the Public Protector attached hereto shall be published in the *Gazette officielle du Québec*.

FRANÇOIS CÔTÉ,
Secretary of the Office of the National Assembly

Regulation respecting contracts of the Public Protector

Public Protector Act
(R.S.Q., c. P-32, s. 35.2)

CHAPTER I GENERAL

DIVISION I SCOPE

1. This Regulation applies to the following contracts entered into by the Public Protector:

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

(2) construction contracts, that is, contracts entered into for construction work within the meaning of the Building Act (R.S.Q., c. B-1.1) for which the supplier must hold the licence required under Chapter IV of that Act; and

(3) service contracts, including contracts of enterprise or for services within the meaning of the Civil Code, damage insurance contracts and carriage contracts, but excluding construction contracts and contracts referred to in the Politique d'intégration des arts à l'architecture et à l'environnement des bâtiments et des sites gouvernementaux (O.C. 955-96); and

(4) contracts to lease immovables, other than occupation agreements between the Public Protector and the Société immobilière du Québec, by which the right to occupy an immovable is acquired for a certain time in return for rent.

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

(1) contracts under a cooperation agreement financed in whole or in part by an international cooperation organization if the agreement contains contract rules; and

(2) contracts entered into in an emergency situation where the safety of persons or property is in jeopardy, except for section 64.

DIVISION II DEFINITIONS

3. In this Regulation,

“amount of the contract” means the total financial commitment under a contract, including renewals or, in the case of an open contract, the estimated amount of the expenditure that may result therefrom; (*montant du contrat*)

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

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

“call for tenders” means a procedure calling for competitive tendering by several suppliers, inviting them to submit bids or tenders for services with a view to obtaining a contract; (*appel d’offres*)

“central register” means the central register of Government suppliers as established under section 62 of the Public Administration Act (R.S.Q., c. A-6.01); (*fichier*)

“estimated amount of the contract” means the total estimated expenditure for the contract except in the case of a contract with a term of at least one year, renewable for a determined period, where it means the estimated expenditure for the initial contract excluding the estimated expenditure for contract renewal; 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*)

“mixed contract” means a contract involving at least two of the following: the supply of goods, the supply of services and construction work; (*contrat mixte*)

“open contract” means a contract whose purpose is to meet the future needs of a group of users, in which the Public Protector undertakes to procure 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 as required; (*contrat ouvert*)

“place of business” means a place where a supplier conducts activities on a permanent basis, which is clearly identified by the supplier’s name and is open during regular business hours; (*établissement*)

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

“professional services contract” means a contract for services to be carried out by professionals or under their responsibility, it being understood that professionals are persons who hold an undergraduate university degree recognized by the Minister of Education or the equivalent and, in the case of an exclusive profession, are members of a professional order governed by the Professional Code (R.S.Q., c. C-26); (*contrat de services professionnels*)

“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*)

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

“standing offer” means a bid or a tender for services submitted by a supplier with a view to obtaining specific supply or service contracts at predetermined prices or according to a predetermined method of setting prices, on specific terms and conditions, for a specific period and as required, involving either an obligation to deliver the goods or services required whenever a user so requests, or an obligation to deliver them insofar as they are available; (*offre permanente*)

“supplier” means any legal or natural person or partnership, except 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 established under section 22.0.1 of the Act respecting correctional services (R.S.Q., c. S-4.01) or a non-profit legal person that is not an adapted work centre; (*fournisseur*)

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

“travel services” means services involving the issue of an airline passenger ticket and may include advice on the organization of a trip, hotel reservations, car rental, and the reservation, issue or delivery of ground transportation tickets; (*services relatifs aux voyages*)

“unsolicited offer” means an offer of professional services submitted by a supplier, on the supplier’s own initiative, in order to meet or try to meet a need of the Public Protector. (*proposition non sollicitée*)

CHAPTER II CONTRACT CONDITIONS

DIVISION I SUPPLIER’S OBLIGATIONS

§1. *Affirmative action program*

4. Where the amount of a supply or service contract is \$100,000 or more, or where the amount of a supply or service subcontract to a supply or service contract is \$100,000 or more, the contract or subcontract may not be entered into with a Québec supplier or subcontractor whose business employs more than 100 persons unless the supplier or subcontractor has made a commitment to implement an affirmative action program that complies with the Charter of human rights and freedoms (R.S.Q., c. C-12) and holds an attestation to that effect issued by the Minister responsible for Government Administration.

If such a contract or subcontract is to be entered into with a supplier or subcontractor outside Québec but within Canada whose business employs more than 100 persons, the supplier or subcontractor shall provide an attestation to the effect that the supplier or subcontractor has already made a commitment, if any, to implement an employment equity program of the province or territory concerned or to implement a federal employment equity program.

The Public Protector shall award no other contract to a supplier or a subcontractor whose attestation has been revoked until such time as the supplier or subcontractor is issued a new attestation.

§2. *Quality assurance*

5. A contract, except where referred to in paragraphs 5, 7 and 13 of section 8, may not be entered into with a supplier or a group of businesses acting as a supplier unless that supplier or the business in that group that is to carry out the contract holds a registration certificate

issued by a registrar accredited by the Standards Council of Canada or by an accrediting body recognized by it, according to which it has a quality assurance system that covers the goods and services or construction work in question and complies with the ISO standard listed in Schedule I to the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies (2000, 35 G.O. 2, 4377) in the following cases:

(1) where the main object of the contract is the supply of goods or services pertaining to a specialty and for an estimated amount listed in section 1 of that schedule; or

(2) where the contract is a construction contract that, in whole or in part, pertains to a specialty listed in section 3 of that schedule and the estimated amount for the part of the contract pertaining to that specialty is listed in that section.

The definitions of the specialties in that schedule correspond to those used for the registration of suppliers in the central register for the specialties where such registration is possible.

6. Notwithstanding section 5, a call for tenders may be extended to all suppliers concerned, whether or not they hold an ISO registration certificate, in the following cases:

(1) where the territory considered in the call for tenders does not allow healthy competition as not enough suppliers in the territory hold an ISO registration certificate in a specialty listed in Schedule I of the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies; or

(2) where the contract is for printing services.

In such cases, when tenders are submitted by suppliers holding an ISO registration certificate listed in Schedule I of the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, the lowest tender or the tender for services with the highest score is determined after subtracting up to 10% from the tender submitted by each such supplier. The percentage fixed for this purpose by the Public Protector must be specified in the tender documents.

DIVISION II CALL FOR TENDERS

7. Subject to section 8, a contract may not be entered into unless a call for tenders was 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; and
- (3) \$25,000 for a construction contract or a professional services contract.

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

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

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

(3) where the name of only one supplier is requested or obtained from the central register;

(4) where, after an extensive and documented search, only one supplier with a place of business in Québec was found to meet the requirements and to have the qualifications necessary to carry out the contract or there are no qualified suppliers in the territory in question;

(5) where entering into a contract with a supplier other than the supplier having supplied movable property, a service or construction work could void existing guarantees on the movable property, service or work;

(6) where because of the cost of transportation of construction materials or because a supplier holds a copyright or right of ownership providing a significant advantage over other potential suppliers, there can be no competition since only one supplier is able to submit a tender at an economically attractive price;

(7) where a contract is awarded to the only possible supplier by reason of an exclusive right such as a copyright or a right based on a licence or a patent, or by reason of the artistic or museological value of the goods or services to be supplied;

(8) where a contract is awarded under a co-production agreement in the cultural field and such agreement provides for specific contract conditions and financial participation by a co-producer who is not subject to this Regulation;

(9) where the contract is for less than \$25,000 and is for the furnishings of the private office used by the Public Protector in the performance of his or her duties;

(10) where the contract is for the purchase of movable property intended for resale to the public;

(11) where the contract is for the purchase of books, works of art or documents deposited in accordance with Chapter II.1 of the Act respecting the Bibliothèque nationale du Québec (R.S.Q., c. B-2.2);

(12) where a construction contract or auxiliary services contract is given to a public utility firm referred to in section 98 of the Charter of the French language (R.S.Q., c. C-11) within the scope of its activities;

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

(14) where the contract is a service contract for the hiring of a labour relations investigator, conciliator, negotiator or arbitrator, or of an expert court witness;

(15) where a professional services contract is given to the designer of the original construction plans and specifications for adaptation, alteration or supervision work and the original plans and specifications are used again;

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

(17) where a professional services contract is given to the designer of the plans and specifications or to the person who supervised the work for the defense of the Public Protector's interests with respect to a claim submitted to the ordinary courts of law or to an arbitration procedure;

(18) where a service contract relating 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 1 of the Act respecting private education (R.S.Q., c. E-9.1);

(19) where a professional services contract relating to study or research activities is awarded 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) where the contract is related to a formal event and is for accommodation, restaurant, hall rental or cruise services;

(21) where the contract is for auxiliary services and is subject to a set rate prescribed under an Act or approved by the Government or by the Conseil du trésor;

(22) where the contract is for less than \$100,000 and is a travel services contract under which section 18 applies;

(23) where the contract is for repairing motor vehicles or heavy equipment;

(24) where the goods to be purchased under the contract have already been the object of a leasing contract, and the payments are totally or partially credited to the purchase;

(25) where the Public Protector makes the media placement directly;

(26) where the contract is for the renewal of a leasing contract; or

(27) where the contract is for construction work on an immovable or part of an immovable leased by the Public Protector and for related professional services, and the contract is to be performed by the lessor of the immovable.

9. Where the Public Protector is of the opinion that, due to the special requirements or time limits involved, the call for tenders procedure prescribed in this Regulation would compromise the carrying out of an intervention in accordance with the Public Protector Act, the Public Protector may

(1) extend an invitation to tender for the awarding of a contract; or

(2) exempt the awarding of a contract from the call for tenders procedure.

Notwithstanding sections 10 and 11, only the Public Protector may sign a contract or authorize a call for tenders under this section.

DIVISION III AUTHORIZATION REQUIRED

10. Every contract referred to in this Regulation must be signed by the Public Protector or by a person authorized to sign on behalf of the Public Protector.

11. A call for tenders must be authorized by the Public Protector or by the Public Protector's representative authorized for that purpose in the following cases:

(1) where the call for tenders provides that a supplier must hold a registration certificate that complies with an ISO standard attesting that the supplier has a quality control system the scope of which is different from that provided for in sections 5 and 6;

(2) where tenders for services are solicited with a view to awarding a supply or construction contract or an auxiliary services contract;

(3) where the call for tenders for services provides for a remuneration based on a rate and estimated at \$100,000 or more, except in the case of a contract subject to a set rate prescribed under an Act or approved by the Government or by the Conseil du trésor, if the estimated amount of the contract is less than \$500,000; or

(4) where standing offers are solicited and the applicable conditions do not stipulate that specific contracts must be awarded, among the selected suppliers, to the supplier who, given the cost of transportation related to the delivery of the goods or services and, where applicable, their availability, submitted the lowest price or the best quality/price ratio.

12. A contract must be authorized by the Public Protector or by the Public Protector's representative authorized for that purpose in the following cases:

(1) where the term of the contract or of the solicited standing offers is more than three years;

(2) where only one compliant tender is deemed acceptable by the selection committee following the review of the tenders for services received;

(3) where a call for tenders was not issued and the contract awarded to a contracting party other than a supplier does not include a clause whereby up to 10% of the amount of the contract may be used to remunerate activities subcontracted out; or

(4) where the contract is for an amount of \$25 000 or more and only one compliant tender has been received.

CHAPTER III SPECIFIC RULES FOR CERTAIN CONTRACTS

DIVISION I CONSTRUCTION CONTRACTS

13. Where it is decided after tenders are opened that a contract is not to be awarded following a public call for tenders, the lowest compliant tenderer shall 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 less than \$1,000,000; or

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

14. Acceptance of the work by the Public Protector shall be made by means of a notice of acceptance with or without reservation.

15. Once the supplier's contract has been partially completed, the Public Protector may accept, in accordance with sections 16 and 17, any completed portion of the work provided that the supplier consents thereto and guarantees free and safe access to the portions put into use.

16. A notice of acceptance with reservation is a document signed by the representative authorized for that purpose by the Public Protector, 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 sent with a list of the work to be completed or corrected, as the case may be.

17. A notice of acceptance without reservation is a document signed by the representative authorized for that purpose by the Public Protector, 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 II TRAVEL SERVICES CONTRACTS

18. Any travel services contract for an amount less than \$100,000 shall be awarded to a supplier located in the region of the Communauté métropolitaine de Québec or in the region of the Communauté métropolitaine de Montréal and selected by the Public Protector from among the suppliers in the central register for the specialty concerned.

DIVISION III MIXED CONTRACTS

19. Subject to sections 20 to 22, a mixed contract must be entered into in accordance with the rules applicable to the object representing the greatest 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 relating to supply.

20. Sections 43 and 44 do not apply to a mixed construction and services contract.

21. 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 stipulate, if need be, a unit price, rate or percentage.

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

DIVISION IV STANDING OFFERS

23. The Public Protector may only solicit standing offers for the purpose of drawing up a list of suppliers to meet the needs of a group of users.

24. The Public Protector may not draw up a list of suppliers where, following a public call for tenders, there is only one compliant standing offer. However, the Public Protector may award that supplier an open contract, if the supplier accepts it.

DIVISION V UNSOLICITED OFFERS

25. Where the Public Protector receives an unsolicited offer, the Public Protector must

(1) make sure that it does not correspond to a project the Public Protector has already started, that it falls within the scope of the Public Protector's mission and that it could directly help achieve one of the Public Protector's objectives; and

(2) evaluate its quality particularly in view of its feasibility, profitability and timeliness.

26. After evaluating an unsolicited offer, the Public Protector shall notify the supplier as to whether the offer is admissible or not and, if not, shall give the reasons therefor.

27. Where the unsolicited offer is determined to be admissible by the Public Protector, the procedure is as follows:

(1) if the unsolicited offer is not detailed enough to enable potential suppliers to offer to carry it out at a fixed price, the Public Protector shall, without issuing a call for tenders, award the supplier who submitted the offer a contract for the purpose of clarifying the offer, provided that the contract is for less than \$100,000 and the supplier guarantees that the ensuing offer will be detailed enough to be carried out at a fixed price; and

(2) if the offer is or becomes detailed enough to enable potential suppliers to offer to carry it out at a fixed price, the Public Protector shall hold a call for tenders for services.

Notwithstanding section 44, the call for tenders referred to in subparagraph 2 of the first paragraph must require that suppliers submit a fixed price with a view to obtaining the contract. The lowest compliant offer shall be determined after subtracting 7% from the price tendered by the supplier who submitted the unsolicited offer determined to be admissible, provided that the supplier did not have to clarify the offer pursuant to subparagraph 1 of the first paragraph.

28. An unsolicited offer determined to be admissible may not be submitted again by a supplier to another department or body, unless the Public Protector informs the supplier that the offer will not be carried out.

CHAPTER IV TYPES OF CALLS FOR TENDERS

DIVISION I PRINCIPLE

29. Where a call for tenders is required, it must be either a public call for tenders or an invitation to tender.

DIVISION II APPLICATION

§1. Public call for tenders

30. A public call for tenders shall be issued where the estimated amount of the contract is \$25,000 or more.

31. A public call for tenders may be issued in the following cases:

(1) where the estimated amount of the supply or auxiliary services contract is less than \$25,000;

(2) where no compliant bid or compliant and acceptable tender for services has been received following an invitation for tender; or

(3) where the negotiation allowed by section 60 does not lead to the signing of a contract.

§2. Invitation to tender

32. Subject to section 31, an invitation to tender shall be issued in the following cases:

(1) where the estimated amount of the supply or auxiliary services contract is less than \$25,000; or

(2) where the contract is related to a specialty in the central register, except in the case specified in paragraph 3 of section 8.

33. Subject to the second paragraph, where the Public Protector issues an invitation to tender, the Public Protector shall address it to a minimum of three suppliers who have a place of business in Québec or, failing that, to the only two suppliers who have a place of business in Québec.

Where an invitation to tender is issued and the specialty and level corresponding to the estimated amount of the contract are provided for in the central register, the invited suppliers shall include suppliers whose names are obtained from the central register.

34. Notwithstanding sections 35 and 36, where a call for bids is issued for a contract the estimated amount of which is less than \$25,000, the invitations and tenders may be made verbally, in which case a written report of all acts performed shall be kept.

DIVISION III ELIGIBILITY AND COMPLIANCE OF TENDERS

35. The Public Protector shall indicate, in the tender documents, the eligibility requirements for tenders and the conditions for the awarding of contracts, the rules for the receipt, opening, compliance and evaluation of tenders, including the evaluation criteria and the weighting applicable in accordance with section 47 and, where applicable, the use of the preferential margin fixed in section 6 or in the second paragraph of section 27.

If the purpose of the call for tenders is to draw up a list of suppliers from whom standing offers will be accepted, the tender documents shall also specify the terms and conditions for the inclusion of a supplier on that list and the contract awarding procedures.

In addition, the Public Protector shall state therein that the Public Protector does not undertake to accept any of the tenders received.

36. The rules relating to the compliance of tenders shall specify the irregularities that will entail automatic rejection of a tender, in particular where

(1) a required document is missing;

(2) a required signature by an authorized person is missing;

(3) an erasure of or a correction to the tendered or proposed price is not initialed by the authorized person, where applicable;

(4) the tender is conditional or restrictive; or

(5) the place and deadline for receiving tenders have not been complied with.

37. Only tenders submitted by suppliers having the required qualifications, authorizations, permits, licences and registrations and having a place of business in Québec shall be considered by the Public Protector.

38. The Public Protector may refuse to consider the tender of a supplier for whom the Public Protector produced, in the two years preceding the date of opening of tenders, an unsatisfactory performance report, which evaluation was upheld pursuant to section 73, if the nature of the contract in question is the same.

In addition, the Public Protector may refuse to consider the tender of a supplier who previously omitted to follow up a tender submitted to the Public Protector or a contract entered into in the two years preceding the date of opening of tenders, except if the Public Protector enforced owing to that omission a guarantee the Public Protector had required.

DIVISION IV PUBLICATION OF PUBLIC CALLS FOR TENDERS

39. A public call for tenders is made by means of a notice circulated in an electronic tendering system.

40. The notice shall include information concerning the goods, services or construction work required and it shall state the conditions applicable to the receipt of tenders and the conditions set out in section 37.

The notice must, where applicable, specify that the Public Protector may refuse to consider a tender pursuant to section 38.

DIVISION V TENDER DEADLINES

41. The deadline for receiving tenders shall be calculated from the date the call for tenders is first published.

42. Any addenda shall be forwarded to the suppliers to whom tender documents have been provided. If the addenda is likely to affect the amount of the bids, it must be forwarded at least seven days before the tender deadline. The deadline shall be extended by as many days as necessary to observe the seven-day notice.

CHAPTER V SOLICITING OF TENDERS, EVALUATION OF TENDERS AND AWARDING OF CONTRACTS

DIVISION I SOLICITING OF TENDERS

43. Tenders shall be solicited by a call for bids or by a call for tenders for services in the following cases:

(1) where a call for tenders is required to award a contract; or

(2) where a list of suppliers is to be drawn up with a view to awarding contracts based on standing offers accepted from those suppliers.

44. A price must be solicited where a call for tenders for services is issued.

Notwithstanding the first paragraph, the solicitation of a price is not required in the following cases:

(1) where a services contract is to be awarded for the carrying out of an advertising campaign; or

(2) where there is a set rate prescribed under an Act or approved by the Government or by the Conseil du trésor.

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

DIVISION II EVALUATION OF TENDERS FOR SERVICES

§1. Selection committee

45. The evaluation of tenders for services shall be made by a selection committee composed of a secretary and of at least three members appointed by the Public Protector or the Public Protector's representative authorized for that purpose. In addition, the Public Protector shall ensure the rotation of the persons designated to sit on such committees.

§2. Selection procedure

46. Members of the selection committee shall evaluate the quality of compliant tenders for services by means of a chart developed by the Public Protector.

47. The chart shall comprise a minimum of four criteria allowing the evaluation of tenders for services.

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

48. Tenders shall be evaluated according to the established criteria without the tendered price, where required, being known by the members of the selection committee. The price shall be tendered under separate cover.

49. Each tender for services shall be evaluated individually and each criterion shall receive a mark between zero and five; a three shall be granted where the evaluation is deemed satisfactory.

50. The final score granted to a tender for services shall be the total of the marks obtained in respect of each of the criteria, which shall be determined by the product resulting from the multiplication of the mark given by the selection committee by the weighting established.

A minimum score of 60% may be required in respect of any criterion or group of criteria identified in the tender documents. In that case, a tender for services that does not reach that minimum is considered unacceptable.

51. Where the call for tenders for services does not solicit a price, the selection committee shall determine the supplier who has obtained the highest score.

52. Where the call for tenders for services solicits a price, the selection committee shall only retain the tenders for services considered acceptable. An acceptable tender for services is one that obtains at least 70 points out of 100 in the evaluation of the quality criterion, the committee restricting its evaluation to the five tenders having obtained the highest scores.

Notwithstanding the foregoing, where the number of tenders for services retained pursuant to the first paragraph is less than three, any tender for services that obtains at least 60 points out of 100 is also considered acceptable, the committee restricting its evaluation to those having obtained the highest scores in order to select five tenders in all.

53. The supplier whose tender for services is acceptable as to quality pursuant to section 52 having tendered the lowest price or the price deemed the lowest under the second paragraph of section 27, in terms of the approximate total price, where applicable, shall be awarded 100 points for the price criterion. The other suppliers whose tenders for services are acceptable shall be awarded 100 points minus the number of points corresponding to the percentage

representing the difference between their price and the lowest tendered price, up to a maximum of 10 points; a supplier whose tendered price exceeds the lowest tendered price by more than 10 points shall be eliminated.

For each of the acceptable tenders for services, the points obtained in respect of quality and price shall be added up. The selection committee shall determine the supplier who has obtained the highest score.

The price tendered for an unacceptable tender for services shall not be considered and the envelope containing that price shall be returned unopened to the supplier.

54. Where the call for tenders for services provides that the evaluation is to be made in two stages, the first stage shall consist of a call for tenders for services without prices following which the selection committee shall retain a certain number of suppliers who shall be invited to participate in the second stage. The number of suppliers to be selected for the second stage must be determined in the tender documents and the suppliers invited to submit new tenders for services must be those having obtained the highest scores.

55. The result of the evaluation of the file of a supplier having submitted a tender for services shall be sent to the supplier within 15 days following the signing of the contract. The information forwarded shall include

(1) the rank and score obtained by the supplier or the reasons why the supplier's tender is non-compliant;

(2) the number of compliant and non-compliant suppliers; and

(3) the name of and score obtained by the successful tenderer and, where applicable, the price tendered.

The names of the members of the selection committee shall also be forwarded to suppliers upon request.

DIVISION III **AWARDING OF CONTRACTS**

56. In the case of a call for bids, the contract shall be awarded to the supplier who submitted the compliant tender with the lowest fixed price or approximate total price, as the case may be, as calculated in accordance with the method provided for in the tender documents or to the supplier who is deemed to have submitted the lowest price pursuant to section 6. If identical bids are submitted, the contract shall be awarded by a drawing of lots among the suppliers. The price indicated in the contract shall not exceed the price tendered.

57. In the case of a call for tenders for services where a price was not solicited, the contract shall be awarded to a supplier whose compliant tender obtained the highest score. In the case of identical results, the contract shall be awarded by a drawing of lots among the suppliers.

58. In the case of a call for tenders for services where a price was solicited, the contract shall be awarded to the supplier whose compliant tender obtained the highest score pursuant to section 53. In the case of identical results, the contract shall be awarded to the supplier who has submitted the lowest price or approximate total price, as the case may be, or to the supplier who is deemed to have submitted the lowest price pursuant to the second paragraph of section 27. In the case of identical tenders for services and prices, the contract shall be awarded by a drawing of lots among the suppliers. The price indicated in the contract shall not exceed the price tendered.

59. The Public Protector may, following a public call for tenders, negotiate the price with the sole supplier having submitted a compliant bid or a compliant and acceptable tender for services, where the price tendered by the supplier varies considerably from the initial estimate.

60. The Public Protector may, following an invitation to tender, negotiate the price with the supplier having submitted the lowest compliant bid or having obtained the highest score in respect of a compliant and acceptable tender for services where the price tendered by the supplier varies considerably from the initial estimate.

61. Where the Public Protector has drawn up a list of suppliers whose standing offers have been accepted, the Public Protector shall award, in accordance with the terms and conditions of the tender documents, to any supplier appearing on that list any supply or services contract covered by that list of suppliers.

CHAPTER VI CONDITIONS FOR THE ADMINISTRATION OF CONTRACTS

DIVISION I SUPPLEMENTS

62. Subject to section 63, the Public Protector may grant a supplement to the amount payable for the performance of a contract in any of the following cases:

(1) where an amendment to the contract is required to ensure the carrying out of the project;

(2) where there is a variation in the amount to which a percentage already established is to be applied or a variation in a quantity for which a unit price or rate was agreed upon; or

(3) where salaries payable have been changed under an Act or an order in council.

63. A supplement to a supply, construction or professional services contract in a case referred to in paragraph 1 of section 62 or a supplement attributable to a variation in a period determined in a contract where the remuneration is established on the basis of a rate must be authorized by the Public Protector in the following cases:

(1) where the initial amount of the contract is less than \$100,000 and the supplement or the total of the supplements exceeds 25% of the amount of the contract; or

(2) where the initial amount of the contract is \$100,000 or more and the supplement or the total of the supplements exceeds \$25,000 or 10% of the amount of the contract, whichever is greater.

DIVISION II PAYMENT

64. No payment for the performance of a contract entered into in an emergency situation where the safety of persons or goods is in jeopardy may be made without the authorization of the Public Protector or the Public Protector's representative authorized for that purpose.

DIVISION III SETTLEMENT OF DISPUTES

65. Any dispute arising from a contract or during the performance of a contract may be settled by legal recourse or arbitration.

66. The Public Protector may be a party to an arbitration agreement only if the contract entered into with a contracting party so provides.

For the purposes of the first paragraph, "arbitration agreement" means an agreement under which the Public Protector undertakes with another contracting party to submit a current or potential dispute to one or more arbitrators other than the courts.

67. A dispute submitted to arbitration shall be settled according to the provisions of the contract and to the rules of law applicable to the case.

68. Every arbitration decision is final and is not subject to appeal.

CHAPTER VII EVALUATION OF THE PERFORMANCE OF THE SUPPLIERS

69. The Public Protector shall evaluate the performance of a supplier in respect of a contract of \$100,000 or more.

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

71. The Public Protector shall forward a copy of any unsatisfactory performance report to the supplier concerned.

72. A supplier may, within 30 days following receipt of an unsatisfactory performance report, forward any comments on that report in writing to the Public Protector.

73. Within 30 days following the period provided for in section 72 or within 30 days following receipt of the supplier's written comments, as the case may be, the Public Protector shall either revoke or uphold the evaluation and shall inform the supplier of that decision. In the event that that time limit is not respected, the supplier's performance shall be considered satisfactory.

CHAPTER VIII CENTRAL REGISTER

74. Except in the cases provided for in sections 75 and 76, the Public Protector shall solicit tenders from all the suppliers whose names have been referred to the Public Protector from the central register.

75. The name of a supplier referred from the central register may be refused by the Public Protector if that supplier has been given an unsatisfactory performance report by the Public Protector for a contract performed in the required specialty in the two years preceding the date on which the names were referred. The name of the supplier who has been refused is deemed to have been already referred and the Public Protector may request that the name be replaced, except if all the names of the suppliers registered in the specialty and territory at the level concerned have been referred.

76. The name of a supplier outside Québec referred from the central register must be refused by the Public Protector.

77. If a contract project is abandoned by the Public Protector, the names of the suppliers referred from the central register in respect of that project are deemed not to have been referred.

78. As soon as the Public Protector is informed that the registration of a supplier whose name has already been referred from the central register has been cancelled or struck off the central register in a given specialty or level, the Public Protector shall suspend any procedure undertaken with the supplier with a view to entering into a contract. Notwithstanding the foregoing, if the contract is already entered into and includes a renewal clause, the Public Protector shall ascertain that the supplier is properly registered with the central register before the contract is renewed.

CHAPTER IX TRANSITIONAL AND FINAL PROVISIONS

79. Procedures for awarding contracts undertaken before the date of coming into force of this Regulation shall be continued in accordance with the provisions in force on the date on which the procedures were undertaken.

80. Any contract in progress on the date of coming into force of this Regulation shall be continued in accordance with the provisions of this Regulation, unless this Regulation is incompatible with a provision of the contract, in which case the latter provision shall prevail.

81. This Regulation replaces the Regulation respecting contracts of the Public Protector adopted on 20 October 1993 and approved by the Office of the National Assembly on 17 November 1993 by Decision 0640-2.

82. This Regulation comes into force on 27 November 2003.

Adopted in Québec, on November 21, 2003

PAULINE CHAMPOUX-LESAGE,
Public Protector

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