

**3.2.3.** A trustee in bankruptcy or a liquidator is exempt from the requirement to hold a licence if the trustee or liquidator has the construction work of a bankrupt contractor completed by a contractor who holds the appropriate licence.

**3.2.4.** A natural person applying for a building contractor licence for himself or herself or on behalf of a partnership or legal person is exempt, for the licence subclasses in Schedule III to the Regulation respecting the professional qualification of contractors and owner-builders, from the application of subparagraph 1 of the first paragraph of section 58 of the Act as regards proof of knowledge or relevant experience in the carrying out of construction work and that of section 52 of the Act to the extent that that provision renders that condition applicable.

**3.2.5.** A general or undeclared partnership that is constituted for the purpose of carrying out construction work on only one construction project is exempt from the application of Chapter IV of the Building Act (R.S.Q., c. B-1.1), if the following conditions are met:

(1) the proposed work is work authorized in subclasses 1.3 to 1.10 in Schedule I to the Regulation respecting the professional qualification of contractors and owner-builders;

(2) each of the members of the partnership is the holder of a general contractor's licence authorizing the member to carry out the project work or have it carried out; and

(3) the tender documents for the construction project require the successful bidder to provide within the allotted time a contract performance guarantee and a labour, material and services payment bond.”

**9.** This Regulation comes into force on (*insert the date that occurs 180 days after the date of its publication in the Gazette officielle du Québec*).

8442

## Draft Regulation

An Act respecting contracting by public bodies (2006, c. 29)

### Construction contracts of public bodies — Promise and awarding of grants

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 construction contracts of public bodies and amending other regulatory provisions, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation determines the conditions governing construction contracts entered into by public bodies subject to the Act respecting contracting by public bodies (2006, c. 29). In compliance with all applicable inter-governmental agreements, it aims to promote the objectives set out in section 2 of the Act respecting contracting by public bodies that include transparency in contracting processes, honest and fair treatment of tenderers, and accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.

The draft Regulation also proposes to revoke the provisions of the following regulations and by-laws currently applicable to construction contracts: the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, made by Order in Council 961-2000 dated 16 August 2000, the By-law respecting special rules governing supply contracts, construction contracts, and services contracts of the Société immobilière du Québec, approved by Order in Council 76-96 dated 24 January 1996, the By-law concerning special rules respecting certain contracts entered into by the Société québécoise d'assainissement des eaux, approved by Order in Council 1229-94 dated 17 August 1994, the Regulation respecting the application of the Act respecting health services and social services (R.R.Q., 1981, c. S-5, r.1), the Regulation respecting contracts of the Corporation d'hébergement du Québec, approved by Order in Council 972-2001 dated 23 August 2001, the Regulation respecting building construction by establishments, regional councils and the Corporation d'hébergement du Québec, approved by Conseil du trésor Decision 148183 dated 10 January 1984, the Regulation respecting construction contracts

for immovables of school boards, made by Order in Council 1015-90 dated 11 July 1990, the Regulation respecting contracts for the construction of immovables of general and vocational colleges, made by Order in Council 1072-94 dated 13 July 1994, and the Regulation respecting grants for the purposes of construction (R.R.Q., 1981, c. A-6, r.29).

It also proposes to amend the Regulation respecting the promise and awarding of grants (R.R.Q., 1981, c. A-6, r.22) since colleges and universities are to be subject to the Regulation respecting construction contracts of public bodies.

The draft Regulation has no significant impact on the public. It will lighten the administrative burden of enterprises since they will be subject to only one regulation, which should also reduce their administrative expenses.

Further information on the draft Regulation may be obtained by contacting Lucien Turcotte, Director, Réglementation en biens et services, Secrétariat du Conseil du trésor, 875, Grande-Allée Est, Québec (Québec) G1R 5R8; telephone: 418 644-3421; fax: 418 528-6877; e-mail: lucien.turcotte@sct.gouv.qc.ca

Any interested person wishing to comment on the draft Regulation may do so before the expiry of the 45-day period by writing to the Minister responsible for Government Administration and Chair of the Conseil du trésor, 875, Grande-Allée Est, Québec (Québec) G1R 5R8.

MONIQUE JÉRÔME FORGET,  
*Minister responsible for  
Government Administration and  
Chair of the Conseil du trésor*

## **Regulation respecting construction contracts of public bodies and amending other regulatory provisions**

An Act respecting contracting by public bodies  
(2006, c. 29, s. 23)

### **CHAPTER I SCOPE**

**1.** This Regulation applies to construction contracts referred to in subparagraph 2 of the first paragraph of section 3 of the Act respecting contracting by public bodies (2006, c. 29). It also applies to mixed contracts for construction work and professional services and to contracts to devise savings from the improvement of energy efficiency, as defined in section 27.

**2.** For the purposes of this Regulation, the electronic tendering system is the system approved by the Government under section 11 of the Act.

### **CHAPTER II PUBLIC CALL FOR TENDERS**

#### **DIVISION I GENERAL**

**3.** A public call for tenders must be made in accordance with the provisions of this Chapter.

If a public body makes a public call for tenders to award a contract involving an expenditure below the public tender threshold referred to in subparagraph 1 of the first paragraph of section 10 of the Act, the tender closing date set out in subparagraph 6 of the second paragraph of section 4, the requirement as to the place of the establishment set out in subparagraph 2 of the first paragraph of section 6 and the time for sending an addendum set out in the second paragraph of section 9 may differ.

In the case of a task order contract or a contract involving quality evaluation, the public call for tenders must comply with the special provisions of Chapter III.

#### **DIVISION II TENDER DOCUMENTS**

**4.** Every public call for tenders is made by publishing a notice on the electronic tendering system.

The notice forms part of the tender documents and must specify and contain

- (1) the name of the public body;
- (2) a brief description of the construction work required and the site of the work;
- (3) the nature and amount of any required tender security;
- (4) whether or not an intergovernmental agreement within the meaning of section 2 of the Act applies;
- (5) the place where the tender documents or information may be obtained;
- (6) the place as well as the closing and opening dates and times, the closing date being not be less than 15 days after the date on which the notice is published; and

(7) the fact that the public body is not bound to accept any tender.

**5.** In its tender documents, a public body must provide

(1) a description of the construction work and conditions on which the contract is to be carried out;

(2) in the case of a joint call for tenders within the meaning of section 15 of the Act, the identity of every public body and legal person established in the public interest that are parties to the joint call for tenders;

(3) the eligibility requirements of contractors and the compliance requirements for tenders;

(4) a list of the documents or other items required from contractors;

(5) the tender opening procedure;

(6) the contract award rule, including any calculation to be applied before awarding the contract;

(7) the contract to be signed; and

(8) any other particular required under this Regulation.

In the case referred to in subparagraph 2 of the first paragraph, every party to a joint call for tenders must use the services of the selected contractor, on the conditions specified in the tender documents.

**6.** In order to submit a tender, a contractor must meet the following eligibility requirements:

(1) have all the necessary qualifications, authorizations, permits, licences, registrations, certificates, accreditations and attestations;

(2) have in Québec or in a territory covered by an applicable intergovernmental agreement an establishment where activities are carried on on a permanent basis, clearly identified under the contractor's name and accessible during regular business hours; and

(3) meet any other eligibility requirement specified in the tender documents.

Despite subparagraph 2 of the first paragraph, if competition is insufficient, the public body may make eligible any contractor that has an establishment in a territory not covered by an applicable intergovernmental agreement, provided that the public body so specifies in the tender documents.

A contractor that fails to comply with any of those requirements is ineligible.

**7.** Compliance requirements must specify the cases that will entail automatic rejection of a tender, namely

(1) the place or the closing date or time has not been complied with;

(2) a required document is missing;

(3) the security provided does not comply with the form and conditions required;

(4) the required signature of an authorized person is missing;

(5) an erasure of or correction to the tendered price is not initialled;

(6) the tender is conditional or restrictive; and

(7) any other compliance requirement stated in the tender documents as entailing automatic rejection of a tender has not been complied with.

**8.** Provided that it is specified in the tender documents, a public body may refuse to consider any contractor that, in the two years preceding the tender opening date, has been given an unsatisfactory performance report by the public body, failed to follow up on a tender or contract or had a contract cancelled because of failure to comply with the contract conditions.

**9.** A public body may amend the tender documents by sending an addendum to the contractors concerned.

If the amendment is likely to affect the prices, the addendum must be sent at least 5 days before the tender closing time; if that 5-day period cannot be complied with, the closing time must be extended by the number of days needed to ensure compliance with the 5-day period.

**10.** The public body must specify in the tender documents what guarantees are required and the form and conditions to be complied with.

**11.** Tender security is required by a public body if the estimated amount of the contract is equal to or greater than \$500,000, and may be required in all other cases.

Where tender security is required, the contractor must also provide, prior to the signing of the contract, performance security and security for the contractor's obligations with respect to wages, materials and services.

**12.** Tender security in the form of a bond must be submitted in accordance with the requirements of Schedule 1.

Performance security or security for the contractor's obligations with respect to wages, materials and services in the form of a bond must be submitted in accordance with the requirements of Schedule 2 or Schedule 3, as the case may be.

### DIVISION III CALLING FOR AND OPENING OF TENDERS

**13.** A public body solicits solely a price in order to award a construction contract.

**14.** Tenders are opened by the public body at a public opening in the presence of a witness at the designated place and on the date and time fixed in the tender documents.

The names of the contractors and their respective total prices are disclosed, subject to subsequent verifications.

Within 4 business days, the public body must make the tender opening results available on the electronic tendering system.

### DIVISION IV EVALUATION OF TENDERS AND CONTRACT AWARDING

**15.** The public body evaluates the tenders received, ensuring that the contractors are eligible and their tenders are compliant.

If the public body rejects a tender because the contractor is ineligible or the tender is non-compliant, it must so inform the contractor and give the reason for the rejection no later than 15 days after awarding the contract.

**16.** A public body must award the contract to the contractor that submits the lowest price.

**17.** If several contractors obtain identical results following a call for tenders, the contract is awarded by a drawing of lots.

**18.** The public body awards the contract on the basis of the work described and the rules established in the tender documents and according to the price submitted.

The public body may, however, negotiate the price submitted and the price stipulated in the contract may be less than the price submitted if

- (1) only one contractor submitted a compliant tender;
- (2) the contractor agreed to a new price; and
- (3) it is the only change made to the conditions set out in the tender documents or to the tender in the course of the negotiation.

### CHAPTER III SPECIAL RULES FOR AWARDING CONTRACTS

#### DIVISION I TASK ORDER CONTRACTS

**19.** A public body may enter into a task order contract when the procurement requirements are recurrent and the monetary value of the works and the rate or frequency are uncertain.

**20.** The public body must indicate in the tender documents the approximate monetary value of the construction work that the public body intends to have performed.

**21.** A task order contract is entered into for a term not exceeding 3 years, including any renewal.

#### DIVISION II CONTRACTS INVOLVING QUALITY EVALUATION

##### *§1. Call for tenders in 2 stages*

**22.** Despite section 13, a public body may decide to evaluate the quality of a tender by making a call for tenders in two stages.

The first stage consists in selecting contractors by soliciting only a quality demonstration in accordance with the evaluation conditions in Schedule 4. At the second stage, the contractors selected are invited to submit a tender that includes only a price.

The public body must specify in the tender documents the rules to be used to evaluate the quality of tenders, including the evaluation criteria.

**23.** The public body awards the contract to the contractor that submits the lowest price.

*§2. Mixed contracts for construction work and professional services*

**24.** In order to award a mixed contract for construction work and professional services, a public body may consider the quality of a tender. To that end, the public body applies the evaluation conditions in Schedule 5.

In that case, the public body must specify in the tender documents the rules to be used to evaluate the quality of tenders, including the evaluation criteria selected and their respective weighting.

The price and the quality demonstration must be presented separately so that the first paragraph of section 31 may apply. In addition to the cases referred to in section 7, the compliance requirements must state that failure to comply with the requirement will entail automatic rejection of a tender.

**25.** Pursuant to section 24, the public body awards the contract to the contractor that submits the lowest adjusted price.

**26.** A public body may make a public call for tenders in two stages in order to award a contract.

At the first stage, the public body selects contractors by soliciting only a quality demonstration. The tender documents must indicate whether every selected contractor or only a limited number of them will be invited to take part in the second stage.

The selection committee evaluates the quality of a tender according to the following conditions and procedure:

(1) if all the selected contractors are invited to take part in the second stage, the quality of a tender is evaluated in accordance with the evaluation conditions in Schedule 4 and all the contractors that meet at least the minimum quality level are retained;

(2) if only a limited number of contractors are invited to take part in the second stage, the quality of a tender is evaluated in accordance with the evaluation conditions in sections 1 to 7 of Schedule 5 and only those who obtain the highest final scores are retained.

At the second stage, the public body invites the selected contractors to submit separately a price and a quality demonstration in conformity with the evaluation conditions in Schedule 5.

*§3. Contracts to devise savings from the improvement of energy efficiency*

**27.** This subdivision applies to contracts to devise savings from the improvement of energy efficiency, if the contracts involve both professional services and construction work and are paid for directly out of the savings.

**28.** To award a contract to devise savings from the improvement of energy efficiency, a public body must consider the quality of a tender. To that end, it must describe, in the tender documents, the contractor selection process including the tender evaluation process and in particular the evaluation grid, the criteria used and the weighting.

**29.** The public body awards the contract to the contractor that submits the tender with the highest weighted financial value.

For the purposes of the first paragraph, the financial value of a tender is the net discounted savings resulting from the project, namely the current value of the savings less the current value of the costs incurred by the project. The weighted financial value is obtained by multiplying the project's financial value by the final percentage obtained for quality.

*§4. Disclosure of tenderers' names*

**30.** At the public opening of tenders under section 14 for a contract involving quality evaluation, only the names of the contractors are disclosed and the results of the opening are made available in accordance with the third paragraph of that section.

*§5. Evaluation of tenders*

**31.** Tenders are to be evaluated by a selection committee set up for that purpose by the public body. The committee evaluates quality without knowing the price submitted.

Where the tender evaluation is to award a contract involving an expenditure equal to or above the public tender threshold, the selection committee must be composed of a secretary in charge of coordinating activities and of at least three members.

**32.** The public body must inform each tenderer of the results of the quality evaluation within 15 days after awarding the contract.

If Schedule 4 applies, the particulars sent to tenderers are

- (1) confirmation that their tender was accepted or not; and
- (2) the name of and price submitted by the successful tenderer.

If Schedule 5 applies, the particulars sent to tenderers are

- (1) confirmation that their tender was accepted or not;
- (2) their quality score, their adjusted price and their rank according to the adjusted prices, where applicable; and
- (3) the name, quality score and price of the successful tenderer, and the resulting adjusted price.

If Subdivision 3 applies, the particulars sent to tenderers are

- (1) the weighted financial value of their tender and their rank; and
- (2) the name of the successful tenderer and the weighted financial value of the tender.

**33.** For the purposes of section 18 with respect to a contract involving quality evaluation, the condition in subparagraph 1 of the second paragraph of that section is that only one contractor must have submitted an acceptable tender.

### **DIVISION III COMPENSATION**

**34.** Where it is decided after tenders are opened that a contract is not to be awarded following a public call for tenders or, if a quality evaluation is to be made, after a meeting of the selection committee, the tenderer that would have been awarded the contract receives as compensation and final settlement for expenses incurred the amount of

- (1) \$2,000, if the tender is equal to or greater than \$500,000 but less than \$1,000,000; or
- (2) \$5,000, if the tender is equal to or greater than \$1,000,000.

## **CHAPTER IV QUALIFICATION OF CONTRACTORS**

**35.** A public body may qualify contractors prior to entering into construction contracts pertaining to transport infrastructures if

(1) the qualification of contractors is preceded by a public notice to that effect on the electronic tendering system;

(2) a list of the qualified contractors is published on the electronic tendering system and every contractor is informed of entry on the list or the reason for refusal if entry is denied; and

(3) a public notice of qualification is published again at least once a year, even though the public body may qualify contractors at intervals varying from 1 to 3 years.

**36.** Where the public body evaluates the quality of applications for qualification, it must apply the evaluation conditions in Schedule 4 or in sections 1 to 7 of Schedule 5.

**37.** Except in the cases described in section 13 of the Act, every contract subsequent to the qualification of contractors is limited to the qualified contractors only and, if a contract involves an expenditure equal to or above the public tender threshold, it must be awarded through a public call for tenders.

## **CHAPTER V CONDITIONS TO BE MET PRIOR TO ENTERING INTO CONTRACTS**

### **DIVISION I REQUIRED AUTHORIZATION**

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

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

- (1) only one contractor submitted a compliant tender; or
- (2) only one contractor submitted an acceptable tender following a quality evaluation in accordance with Division II of Chapter III.

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

## **DIVISION II**

### **QUALITY ASSURANCE**

**39.** A public body may require a quality assurance system, including the ISO 9001:2000 standard, for the carrying out of a contract. The public body must specify the requirement in the tender documents.

If such a requirement unduly reduces competition, the public body must allow any contractor to submit a tender and grant to a contractor that fulfils the requirement referred to in the first paragraph a preferential margin not exceeding 5%. In the latter case, the price submitted by such a contractor is, for the sole purpose of determining the successful tenderer, reduced by the preferential margin, without any effect on the price for contract awarding purposes.

The percentage of the preferential margin to be applied must be indicated in the tender documents.

## **CHAPTER VI**

### **ACCOUNTABILITY REPORTING**

**40.** Following a public call for tenders, the public body must publish on the electronic tendering system, within 15 days of the awarding of the contract, the name of the successful tenderer and the amount of the contract.

**41.** The public body must publish on the electronic tendering system, at least once every 6 months, a list of the contracts involving an expenditure greater than \$25,000 entered into by mutual agreement or following an invitation to tender, except contracts involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.

**42.** The list to be published pursuant to section 41 must contain at least the following information:

- (1) the name of the contractor, the date and the amount of the contract;
- (2) the nature of the construction work to be performed under the contract; and

(3) in the case of a contract by mutual agreement involving an expenditure above the public tender threshold, the provision in the Act or Regulation under which the contract was awarded.

## **CHAPTER VII**

### **CONTRACT MANAGEMENT CONDITIONS**

#### **DIVISION I**

##### **CHANGE ORDERS**

**43.** A public body may make changes to the work by issuing a change order.

**44.** The value of a change is determined as follows:

(1) estimation, negotiation and acceptance of a detailed lump sum;

(2) if the nature of the change in the work is such that a lump sum cannot be estimated, application of the unit prices indicated in the contract or subsequently agreed on; or

(3) if the nature of the change is such that a lump sum or unit prices cannot be estimated, addition of the cost of labour, materials and equipment relating to the change and increased

(a) by 15% if the work is performed by the contractor; or

(b) by 10% for the contractor and 15% for the subcontractor if the work is performed by a subcontractor.

For the purposes of subparagraph 3 of the first paragraph, the cost of labour, materials and equipment corresponds to the actual costs of the items listed in Schedule 6. The increase includes the contractor's overhead, administrative costs and profits.

**45.** If the public body and the contractor cannot agree on the value of a change at the first negotiation, the detailed estimate of the change required is then determined by the public body and paid according to the conditions stipulated in the contract.

**46.** If the public body determined the amount of a change and the contractor filed a dispute over that amount in writing to the public body within 15 days of the issue of the change order, the parties must pursue the negotiations as follows:

(1) in the case of work relating to a building, the negotiations are pursued in accordance with sections 48 to 50;

(2) in the case of civil engineering work other than work relating to a building, the parties pursue the negotiations with a manager representing the public body and an officer of the contractor with a view to settling the dispute in whole or in part.

If the public body and the contractor cannot settle the dispute in accordance with subparagraph 2 of the first paragraph, the contractor may submit a claim to the public body. In the absence of an agreement between the public body and the contractor, the parties retain all their rights and remedies, in particular those under section 52.

**47.** No change may be required after the work has been accepted with reservation.

## DIVISION II SETTLEMENT OF DISPUTES

### §1. *Work relating to a building*

**48.** The public body and the contractor must attempt to settle amicably any difficulty arising from a contract by following the following steps and procedures:

(1) having a manager representing the public body and an officer of the contractor attempt to settle the dispute in whole or in part within 60 days after receipt of the notice of dispute from the contractor; the parties may agree to extend that period;

(2) if the negotiations do not enable the dispute to be settled in full, the public body or the contractor may, by sending a written notice to the other party within 10 days after the end of the preceding step, require mediation of the unsettled issues, which must be carried out within 60 days following receipt of the notice of mediation; the parties may agree to extend that period.

If a notice of mediation is not sent within the time specified in subparagraph 2 of the first paragraph, the negotiation process is then terminated.

**49.** The mediator is chosen by mutual agreement between the public body and the contractor. The function of the mediator is to assist the parties in clarifying the dispute and defining their positions and interests, and to discuss and explore mutually satisfying solutions to settle the dispute.

The parties, along with the mediator, define the rules applicable to the mediation and set its duration, specify their commitments, expectations and needs as well as the role and duties of the mediator. The fees and expenses of the mediator are to be paid in equal parts by the parties, unless a different sharing arrangement has been agreed upon.

The representative of each party must be duly authorized by the officer of the public body or contractor, as the case may be, to proceed with the mediation.

**50.** In the absence of an agreement between the public body and the contractor following mediation, the parties retain all their rights and remedies, in particular those under section 52.

### §2. *Civil engineering work other than work relating to a building*

**51.** The public body and the contractor must attempt to settle amicably any difficulty arising from a contract by resorting to the dispute resolution clauses in the contract, if any.

In the absence of an agreement between the public body and the contractor, the parties retain all their rights and remedies, in particular those under section 52.

### §3. *Civil engineering work and work relating to a building*

**52.** The public body or the contractor may also settle any difficulty through a court of justice or an adjudicative body, as the case may be, or an arbitrator. In the latter case, general or special authorization from the Minister of Justice is required for public bodies referred to in subparagraph 1 or 2 of the first paragraph of section 4 of the Act.

## DIVISION III PERFORMANCE EVALUATION

**53.** A public body must record in a report the evaluation of any contractor whose performance is considered to be unsatisfactory.

**54.** The public body must complete its evaluation not later than 60 days after the end of the contract and send a copy of the evaluation to the contractor.

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



**56.** Within 30 days after the expiry of the time in section 55 or following receipt of the contractor's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the contractor of the decision. If the chief executive officer fails to act within the prescribed time, the contractor's performance is considered to be satisfactory.

#### DIVISION IV PAYMENT

**57.** Payment of any contract entered into in contravention of the provisions of this Regulation is subject to authorization by the Minister responsible.

#### CHAPTER VIII TRANSITIONAL AND FINAL

**58.** A public body must implement the provisions of subparagraph 2 of the first paragraph of section 5 within 2 years after the coming into force of this Regulation. Within that period, the public body must at least state, in the tender documents, the public bodies and legal persons established in the public interest that are or are likely to be parties to the joint call for tenders.

In that case, the present and future parties to the joint call for tenders must deal with the selected contractor, on the conditions set out in the tender documents.

**59.** The Regulation respecting the promise and awarding of grants (R.R.Q., 1981, c. A-6, r.22) is amended by revoking subparagraph b of the second paragraph of section 4.

**60.** The provisions in the following regulations and by-laws that apply to construction contracts are revoked:

(1) the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, made by Order in Council 961-2000 dated 16 August 2000;

(2) the By-law respecting special rules governing supply contracts, construction contracts, and services contracts of the Société immobilière du Québec, approved by Order in Council 76-96 dated 24 January 1996;

(3) the By-law concerning special rules respecting certain contracts entered into by the Société québécoise d'assainissement des eaux, approved by Order in Council 1229-94 dated 17 August 1994;

(4) the Regulation respecting the application of the Act respecting health services and social services (R.R.Q., 1981, c. S-5, r.1); and

(5) the Regulation respecting contracts of the Corporation d'hébergement du Québec, approved by Order in Council 972-2001 dated 23 August 2001.

**61.** The Regulation respecting building construction by establishments, regional councils and the Corporation d'hébergement du Québec, approved by Conseil du trésor Decision 148183 dated 10 January 1984, is revoked.

**62.** The Regulation respecting construction contracts for immovables of school boards, made by Order in Council 1015-90 dated 11 July 1990, is revoked.

**63.** The Regulation respecting contracts for the construction of immovables of general and vocational colleges, made by Order in Council 1072-94 dated 13 July 1994, is revoked.

**64.** The Regulation respecting grants for the purposes of construction (R.R.Q., 1981, c. A-6, r.29) is revoked.

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

#### SCHEDULE 1 (s. 12)

##### TENDER BOND *Construction Work*

1. \_\_\_\_\_  
(name of the SURETY)

having its principal establishment at

\_\_\_\_\_  
(address of the SURETY)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, hereinafter called the **SURETY**, having taken cognizance of the tender to be submitted on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ to

\_\_\_\_\_  
(name of the PUBLIC BODY)

hereinafter called the **PUBLIC BODY**, by

\_\_\_\_\_  
(name of the CONTRACTOR)

having its principal establishment at

\_\_\_\_\_  
(address of the CONTRACTOR)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, herein after called the **CONTRACTOR**,  
in respect of

\_\_\_\_\_  
(description of the work and location)

stands surety for the **CONTRACTOR**, to the benefit of  
the **PUBLIC BODY**, on the following conditions:

If the **CONTRACTOR** fails to sign a contract in conformity with the tender submitted or fails to provide the guarantees or any other document required following the date of acceptance of the tender, the **SURETY** binds itself to pay to the **PUBLIC BODY** a sum of money corresponding to the difference between the tendered price that had been accepted and the tendered price subsequently accepted by the **PUBLIC BODY**, it being provided that the **SURETY** is not required to pay more than, **as specified in the tender documents**:

– \_\_\_\_\_ percent of the tendered price ( \_\_\_\_\_ %),

or

– the lump sum determined by the **PUBLIC BODY**

\_\_\_\_\_ dollars

(\$ \_\_\_\_\_).

2. The **Contractor** whose tender has been accepted must be notified of such acceptance before the expiry of the tender validity period or any other time period agreed on by the **PUBLIC BODY** and the **CONTRACTOR**; failing that, this obligation is null and void.

3. This bond is governed by the law applicable in Québec and, should it be contested, the courts of Québec have sole jurisdiction.

4. The **SURETY** waives the benefit of discussion and division.

5. The **CONTRACTOR** intervenes in these presents to consent thereto; should the **CONTRACTOR** fail to do so, this obligation is null and void.

**IN WITNESS WHEREOF**, the **SURETY** and the **CONTRACTOR**, by their duly authorized representatives, have signed these presents in

\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

The **SURETY**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

The **CONTRACTOR**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

GQ-01

**SCHEDULE 2**

(s. 12)

**PERFORMANCE BOND**

*Construction Work*

1. \_\_\_\_\_  
(name of the SURETY)

having its principal establishment at

\_\_\_\_\_  
(Address of the SURETY)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, hereinafter called the **SURETY**, having taken cognizance of the tender and the contract duly issued by

\_\_\_\_\_  
(name of the PUBLIC BODY)

herein after called the **PUBLIC BODY**, in respect of

\_\_\_\_\_  
(description of work and location)

and on behalf of

\_\_\_\_\_  
(name of the CONTRACTOR)

having its principal establishment at

\_\_\_\_\_  
(address of the CONTRACTOR)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, hereinafter called the **CONTRACTOR**, binds itself jointly and solidarily with the **CONTRACTOR**, to the benefit of the **PUBLIC BODY**, to perform the contract for the carrying out of the work described above in conformity with the call for tenders, it being provided that the **SURETY** in no case may be required to pay more than

\_\_\_\_\_ dollars  
(\$ \_\_\_\_\_).

2. The **SURETY** agrees that the **PUBLIC BODY** and the **CONTRACTOR** may amend the contract at any time, subject to the right of the **SURETY** to be informed thereof on request and consents to the **PUBLIC BODY** granting any time period necessary to complete the work.

3. If the **CONTRACTOR** fails to perform the contract, including work covered by the guarantees, the **SURETY** assumes the **CONTRACTOR'S** obligations and, where applicable, undertakes and continues the work required within 15 days after receiving notice to that effect from the **PUBLIC BODY**, failing which the **PUBLIC BODY** may have the work completed and the **SURETY** must pay the **PUBLIC BODY** for any excess amount over the price agreed on with the **CONTRACTOR** for performance of the contract.

4. This bond is governed by the law applicable in Québec and, should it be contested, the courts of Québec have sole jurisdiction.

5. The **CONTRACTOR** intervenes in these presents to consent thereto; should the **CONTRACTOR** fail to do so, this obligation is null and void.

**IN WITNESS WHEREOF**, the **SURETY** and the **CONTRACTOR**, by their duly authorized representatives, have signed these presents in

\_\_\_\_\_, this \_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

The **SURETY**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

The **CONTRACTOR**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

GQ-02

**SCHEDULE 3**

(s. 12)

**BOND FOR THE CONTRACTOR'S OBLIGATIONS WITH RESPECT TO LABOUR, MATERIALS AND SERVICES**

*Construction Work*

1. \_\_\_\_\_  
(name of the SURETY)

having its principal establishment at

\_\_\_\_\_  
(Address of the SURETY)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, hereinafter called the **SURETY**, having taken cognizance of the tender and the contract duly issued by

\_\_\_\_\_  
(name of the PUBLIC BODY)

herein after called the **PUBLIC BODY**, in respect of

\_\_\_\_\_  
(description of work and location)

and on behalf of

\_\_\_\_\_  
(name of the CONTRACTOR)

having its principal establishment at

\_\_\_\_\_  
(address of the CONTRACTOR)

herein represented by \_\_\_\_\_  
(name and title)

duly authorized, hereinafter called the **CONTRACTOR**, binds itself jointly and solidarily with the **CONTRACTOR**, to the benefit of the **PUBLIC BODY**, to pay directly the creditors hereinafter defined, it being provided that the **SURETY** in no case may be required to pay more than

\_\_\_\_\_ dollars

(\$ \_\_\_\_\_).

## 2. Creditor means

(1) any subcontractor of the **CONTRACTOR**;

(2) any natural or legal person having sold or leased services, materials or equipment intended exclusively for the work to the **CONTRACTOR** or to the **CONTRACTOR'S** subcontractors, equipment leasing prices being determined solely on the basis of current construction industry standards;

(3) any supplier of materials specially prepared for that work and contract;

(4) the Commission de la santé et de la sécurité du travail, with respect to the contributions resulting from the contract;

(5) the Commission de la construction du Québec, with respect to the contributions resulting from the contract.

3. The **SURETY** agrees that the **PUBLIC BODY** and the **CONTRACTOR** may amend the contract at any time, subject to the right of the **SURETY** to be informed thereof, on request, and consents to the **PUBLIC BODY** granting any time period necessary to complete the work.

4. Subject to clause 3 above, no creditor has direct recourse against the **SURETY** unless the creditor has sent an application for payment to the **SURETY** and to the **CONTRACTOR** within 120 days of the date on which the contractor completed the work or supplied the last services, materials or equipment.

A creditor who has contracted other than directly with the **CONTRACTOR** has no direct recourse against the **SURETY** unless the creditor has notified the **CONTRACTOR** in writing of the contract within 60 days of the commencement of the leasing or delivery of the services, materials or equipment; the notice must indicate the work concerned, the subject of the contract, the name of the subcontractor and the **PUBLIC BODY** concerned.

A subcontractor has no direct recourse against the **SURETY** in respect of sums held back by the **CONTRACTOR** unless the subcontractor has sent an application for payment to the **SURETY** and to the **CONTRACTOR** within 120 days of the date on which the sums held back became payable.

5. Any creditor may institute proceedings against the **SURETY** on the expiry of 30 days after the notice required by clause 4 has been sent, provided that the proceedings are not instituted before the expiry of 90 days after the date on which the creditor's work was performed or the date of supply of the last services, materials or equipment.

6. Any payment made in good faith by virtue of these presents reduces the amount of this bond by a corresponding amount.

7. The **CONTRACTOR** intervenes in these presents to consent thereto; should the **CONTRACTOR** fail to do so, this obligation is null and void.

**IN WITNESS WHEREOF**, the **SURETY** and the **CONTRACTOR**, by their duly authorized representatives, have signed these presents in

\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_

The **SURETY**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

The **CONTRACTOR**

\_\_\_\_\_  
(witness)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(name of signatory in block letters)

\_\_\_\_\_  
(title of signatory in block letters)

GQ-03

#### **SCHEDULE 4**

(s. 22, 26, 32, 36)

##### **QUALITY EVALUATION CONDITIONS**

*for a contract award based on the lowest price*

- At least 3 criteria are required for quality evaluation.
- The public body must specify in the tender documents, for each criterion, the elements of quality required to reach an “acceptable level of performance”, which corresponds to the public body’s minimum expectations for the criterion.
- An acceptable tender in terms of quality is a tender that, for each criterion, meets the “acceptable level of performance”. A tender that does not reach that level of performance in respect of any criterion is rejected.

#### **SCHEDULE 5**

(s. 24, 26, 32, 36)

##### **QUALITY EVALUATION CONDITIONS**

*for a contract award based on the lowest adjusted price*

- The evaluation grid must have at least 3 quality evaluation criteria.
- The public body must specify in the tender documents, for each criterion, the elements of quality required to reach an “acceptable level of performance”, which corresponds to the public body’s minimum expectations for the criterion.
- Each criterion in the evaluation grid is weighted on the basis of its importance for the carrying out of the contract. The total weight of the criteria is 100%.
- Each criterion is evaluated on a scale of 0 to 100 points, the “acceptable level of performance” corresponding to 70 points.
- At least 70 points may be required in respect of any criterion described in the evaluation grid. A tender that does not reach that minimum is rejected.
- The final score for the quality of a tender is the total of the weighted scores obtained in respect of each criterion; the weighted scores are determined by multiplying the score obtained for a criterion by the weight of that criterion.
- An acceptable tender in terms of quality is a tender whose final score is at least 70%.
- The price of each acceptable tender is adjusted according to the following formula:

$$\text{Adjusted price} = \frac{\text{Price submitted}}{\text{Quality adjustment factor}}$$

The quality adjustment factor is equal to:

$$1 + K \left( \frac{\text{Final score for quality} - 70}{30} \right)$$

where

“K” is the additional percentage that the public body is willing to pay to move from a 70-point tender to a 100-point tender, for all criteria.

9. The public body determines in the tender documents the value of K, which must range from 15% to 30%.

## **SCHEDULE 6**

(s. 41)

### **COST OF LABOUR, MATERIALS AND EQUIPMENT**

The contractor must prove each expense relating to a change. The cost of labour, materials and equipment attributable to making the change to the work corresponds to the actual costs of the contractor and subcontractors, in the following categories:

(1) wages and employment benefits paid to workers under an applicable collective agreement and to the foreman and, where applicable, the superintendent supervising the employees on the construction site;

(2) the travel and accommodation expenses of the additional employees required;

(3) the cost of all materials, products, supplies, including materials incorporated into the work by reason of the change to the work, including transportation, storage and handling expenses, the whole corresponding to the lowest price granted to the contractor and subcontractors;

(4) taxes and other duties imposed by any competent authority on the labour, materials and equipment required and to which the contractor is subject, excluding the goods and services tax (GST) and the Québec sales tax (QST) if the public body is exempt from those taxes;

(5) the cost for transporting and using additional equipment and tools that are required, other than hand tools used by the employees;

(6) the cost of additional quality control performed by the person responsible for quality assurance or the superintendent on the work relating to the change;

(7) applicable patent royalties and rights;

(8) additional insurance and security premiums that the contractor must pay as a result of the increase in the contract price;

(9) energy and heating expenses directly attributable to the change;

(10) the cost for the removal and disposal of waste and debris attributable to the change;

(11) the necessary additional protections, temporary installations and security devices;

(12) any other required additional labour, materials or equipment cost not specified in the preceding paragraphs and attributable to performing the change.

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## **Draft Regulation**

An Act respecting contracting by public bodies (2006, c. 29)

### **Supply contracts of public bodies**

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 supply contracts of public bodies, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation determines the conditions governing supply contracts entered into by public bodies subject to the Act respecting contracting by public bodies (2006, c. 29). In compliance with all applicable inter-governmental agreements, it aims to promote the objectives set out in section 2 of the Act respecting contracting by public bodies that include transparency in contracting processes, honest and fair treatment of tenderers, and accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.

The draft Regulation also proposes to revoke the provisions of the following regulations and by-laws currently applicable to supply contracts: the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, made by Order in Council 961-2000 dated 16 August 2000, the By-law respecting special rules governing supply contracts, construction contracts, and services contracts of the Société immobilière du Québec, approved by Order in Council 76-96 dated 24 January 1996, the By-law concerning special rules respecting certain contracts entered into by the Société québécoise d'assainissement des eaux, approved by Order in Council 1229-94 dated 17 August 1994, the Regulation respecting the application of the Act respecting health services and social services (R.R.Q., 1981, c. S-5, r.1) and the Regulation respecting contracts of the Corporation d'hébergement du Québec, approved by Order in Council 972-2001 dated 23 August 2001.