

Draft Regulations

An Act respecting contracting by public bodies (R.S.Q., c. C-65.1)

Supply, service and construction contracts of public bodies — Amendment

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 to amend the Regulation respecting supply contracts of public bodies, the Regulation to amend the Regulation respecting service contracts of public bodies and the Regulation to amend the Regulation respecting construction contracts of public bodies, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulations contain measures to reinforce the transparency and probity of public contracts and to update certain measures in order to better meet the needs of public bodies.

To reinforce transparency in public contracts, the draft Regulations specify the time of the awarding of a contract, introduce the possibility for a public body to provide in a contract options for, as the case may be, the acquisition of goods, services or the carrying out of construction work and require, in such case, the publication of relevant information on the options in the tender notice and documents.

The draft Regulations also provide for the publication, on the electronic tendering system, of certain information for contracts above \$25,000 entered into by mutual agreement or by invitation to tender and the time period for their publication. They also provide for publication in that system of information at the end of the contract, in particular the final cost of the contract.

The draft Regulation to amend the Regulation respecting service contracts of public bodies and the draft Regulation to amend the Regulation respecting construction contracts of public bodies also propose new information elements that a public body must indicate in a notice of qualification. They also propose to allow new service providers and contractors to qualify during the period of validity of a list of qualified enterprises.

To reinforce the probity of public contracts, the 3 draft Regulations include new provisions on the rejection of tenders. They propose to restrict, until the opening of tenders, the disclosure by the operator of the electronic tendering system and by the public body making the call

for tenders of the information that may be used to determine the number of enterprises or the identity of the enterprises that have requested the tender documents or who submitted a tender, including during a call for tenders in 2 stages for services or construction work.

The draft Regulations also provide for an offence for the tenderer that submitted a tender including false or inaccurate information or a falsified document and an offence for having knowingly submitted a request for payment containing an amount the contractor is not entitled to receive under the contract.

For the updating measures, they propose adjustments to the rules on the contribution of the quality assurance system and the rules applicable to joint calls for tenders by public bodies.

The draft Regulation to amend the Regulation respecting supply contracts of public bodies and the draft Regulation to amend the Regulation respecting service contracts of public bodies also update the rules on the affirmative action program.

As for the draft Regulation to amend the Regulation respecting service contracts of public bodies, it allows contracting by mutual agreement of certain specific service contracts. It also removes the requirement to publish information in the case of a service contract for which no waiver of professional secrecy has been obtained. For task order contracts, it amends the English version of the provision requiring the authorization of the chief executive officer of the body where the term of the contract exceeds 3 years and establishes a transitional scheme applicable to calls for tenders whose object is the rental of heavy machinery with operator.

Lastly, the draft Regulation to amend the Regulation respecting supply contracts of public bodies proposes to make it possible to consider the quality of a delivery order contract and the draft Regulation to amend the Regulation respecting construction contracts of public bodies proposes to allow entering into a task order contract with more than one contractor.

The draft Regulations have no impact on the public. They should not have a negative impact on enterprises, including small and medium-sized businesses.

Further information on those draft Regulations may be obtained by contacting Christine Michaud, team leader, Direction de la réglementation et des politiques de gestion contractuelle, Secrétariat du Conseil du trésor, 875, Grande Allée Est, bureau 2.339, Québec (Québec) G1R 5R8; telephone: 418 643-0875, extension 4935; fax: 418 528-6877; email: christine.michaud@sct.gouv.qc.ca

Any person wishing to comment on the draft Regulations is requested to submit written comments within the 45-day period to the Minister responsible for Government Administration and Chair of the Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8.

MICHELLE COURCHESNE,
*Minister responsible for Government Administration and
Chair of the Conseil du trésor*

Regulation to amend the Regulation respecting supply contracts of public bodies

An Act respecting contracting by public bodies (R.S.Q., c. C-65.1, s. 23, 1st par., subpars. 1, 3, 5 to 7 and 15)

1. The Regulation respecting supply contracts of public bodies (R.R.Q., c. C-65.1, r. 2) is amended in section 4

(1) by inserting the following after subparagraph 2 of the second paragraph:

“(2.1) if applicable, a brief description of the options;”;

(2) by adding the following paragraph at the end.

“For the purposes of this Regulation, “option” means an option to renew or an option to acquire additional goods intended to fulfil the procurement requirements referred to in subparagraph 2 of the second paragraph.”.

2. Section 5 is amended

(1) by inserting the following after subparagraph 1 of the first paragraph:

“(1.1) if applicable, a description of the options;”;

(2) by adding “or that have expressed in writing their intent to be parties to it and the prior identification of their procurement requirements” at the end of subparagraph 2 of the first paragraph;

(3) by adding “Any public body and any legal person established in the public interest that have expressed their intent to be parties to the joint call for tenders must also deal with the selected supplier, from the time they become parties to the joint call for tender and on the same conditions.” at the end of the second paragraph.

3. Section 7 is amended by adding the following paragraph at the end:

“Compliance requirements must also specify that the filing by the tenderer of several tenders for the same call for tenders entails automatic rejection of all the tenderer’s tenders.”.

4. The following is inserted after section 7:

7.1. Compliance requirements must also specify that a tender with an unusually low price is non-compliant and must be rejected, after authorization from the chief executive officer of the public body pursuant to Division IV.1.

7.2. A supplier may not submit a tender that contains information the supplier knows to be false or inaccurate, or a document that contains such information or is otherwise falsified.”.

5. The following is inserted after section 9.1:

“DIVISION II.1 IDENTITY OF SUPPLIERS

9.2. The operator of the electronic tendering system may not disclose information that may be used to determine the number of suppliers or the identity of the suppliers that have requested the tender documents, except to the public body that makes the call for tenders.

9.3. The public body that makes a call for tenders may not, until the opening of tenders, disclose information on the number of suppliers or the identity of the suppliers that have requested the tender documents or submitted a tender.”.

6. Section 12 is amended by adding the following paragraph at the end:

“For the purposes of this Regulation, the contract is awarded at the time the identity of the successful tenderer is determined by the public body.”.

7. The following is inserted after section 15:

“DIVISION IV.1 TENDERS WITH AN UNUSUALLY LOW PRICE

15.1. Where a public body deems that the price of a tender seems unusually low, the public body requests the supplier to explain in writing, within 5 days of receiving the request, the reasons warranting such price.

For the purposes of this Division,

(1) the price of a tender is unusually low if, upon completion of an extensive and documented analysis by the committee, it is found that the submitted price cannot enable the supplier to carry out the contract on the conditions set in the tender documents without incurring serious financial losses;

(2) the committee is composed of the person responsible for compliance with contractual rules at the public body and of at least 3 members designated by the chief executive officer of the public body who are not, directly or indirectly, involved in the awarding procedure.

15.2. If the supplier fails to submit explanations within the time set in section 15.1 or if, despite the explanations provided, the public body still considers the price to be unusually low, the public body submits the tender to the committee for analysis.

The person responsible for compliance with contractual rules supervises the committee's work.

15.3. In analyzing the tender, the committee takes the following factors into account, in particular,

(1) the gap between the tendered price and the public body's estimate of the expenditure, which must have been confirmed by an extensive and documented audit;

(2) the gap between the tendered price and the price tendered by the other suppliers that have submitted a compliant tender;

(3) the gap between the tendered price and the price paid by the public body, or by another public body, under a similar contract, taking into account the economic context if need be; and

(4) the representations made by the supplier concerning the existence of particular facts that have an influence on the tendered price, such as

(a) the method of manufacturing the goods covered by the contract, or the components forming the goods;

(b) the exceptionally favorable circumstances helping the supplier in the performance of the contract;

(c) the innovative character of the tender;

(d) the working conditions of the supplier's employees or, if applicable, subcontractors; and

(e) government financial assistance.

15.4. The committee states in a report the reasons in support of the committee's conclusions.

The person responsible for compliance with contractual rules sends a copy of the report to the chief executive officer of the public body and, if the conclusions are that the tendered price is unusually low, to the supplier.

15.5. The supplier may, within 10 days of receiving the report referred to in section 15.4, send written comments to the public body.

15.6. The chief executive officer of the public body decides, before the expiry of the period of validity of tenders, whether he or she upholds the committee's conclusions or not and, if they are upheld, authorizes the rejection of the tender.

15.7. The public body informs the minister responsible on an annual basis of the tenders rejected pursuant to section 15.6."

8. The following is inserted after section 16:

"**16.1.** Despite section 10, a public body may evaluate the quality of a tender in order to award a delivery order contract by applying the provisions of Division II respecting an evaluation based on a minimum level of quality."

9. Section 35 is amended by replacing the second paragraph by the following:

"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 must provide an attestation to the effect that the supplier or subcontractor has already made a commitment to implement an employment equity program of the province or territory concerned, as applicable, complying with the provisions of the program.

If such a contract or subcontract must be entered into with a supplier or a subcontractor in Québec or outside Québec but within Canada whose business employs more than 100 persons under federal regulations and subject to the Employment Equity Act (S.C., 1995, c. 44), the supplier or subcontractor must provide an attestation to the effect that the supplier or subcontractor has already made a commitment to implement a federal employment equity program complying with the provisions of the program."

10. Section 36 is replaced by the following:

“**36.** The Chair of the Conseil du trésor cancels the attestation issued to a supplier referred to in the first paragraph of section 35 who does not fulfil a commitment to implement an employment equity program.

Any supplier whose attestation referred to in section 35 has been cancelled for not fulfilling a commitment may not enter into a supply contract with a body referred to in section 34 or a supply subcontract related to such contract as long as a new attestation has not been issued.”.

11. Section 37 is amended by replacing “the ISO 9001: 2000 standard” in the first paragraph by “an ISO standard”.

12. Sections 38 to 40 are replaced by the following:

“DIVISION I

CONTRACTS ENTERED INTO BY PUBLIC CALL FOR TENDERS

38. Following a public call for tenders, the public body publishes on the electronic tendering system, within 15 days of the awarding of the contract, an initial description of the contract containing at least

(1) the name of the supplier or, in the case of a delivery order contract involving more than one supplier, the name of the suppliers selected;

(2) the nature of the goods covered by the contract;

(3) the date of awarding of the contract and its amount or, in the case of a delivery order contract, the estimated amount of the expenditure or, in the case of a delivery order contract involving more than one supplier, their respective tendered price; and

(4) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised.

38.1. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 38, the final description of the contract. That period is extended to 120 days for a contract entered into following a joint call for tenders referred to in section 15 of the Act.

The final description of the contract contains at least

(1) the name of the supplier, the date of the end of the contract and the total amount paid;

(2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and

(3) in the case of a delivery order contract involving more than one supplier, the name of the suppliers and the total amount paid to each.

38.2. If a delivery order contract involves price lists whose scope or layout does not make it possible to publish the results in accordance with sections 38 and 38.1, the public body indicates on the electronic tendering system how to obtain the information related to the results.

DIVISION II

CONTRACTS ENTERED INTO BY MUTUAL AGREEMENT OR BY INVITATION TO TENDER

39. The public body publishes, on the electronic tendering system, within 30 days of entering into a contract involving an expenditure greater than \$25,000 and entered into by mutual agreement or following an invitation to tender, an initial description of the contract containing at least

(1) the method for awarding the contract;

(2) the name of the supplier;

(3) the nature of the goods covered by the contract;

(4) the date of the contract and its amount or, in the case of a delivery order contract, the estimated amount of the expenditure;

(5) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised; and

(6) in the case of a contract entered into by mutual agreement and involving an expenditure above the public tender threshold, the provision of the Act or of this Regulation under which the contract was awarded and, in the case of a contract awarded pursuant to subparagraph 4 of the first paragraph of section 13 of the Act, a statement of the reasons invoked in support of not using a public call for tenders.

40. The public body also publishes, on the electronic tendering system, within 90 days of the end of a contract referred to in section 39, a final description of the contract.

The public body also publishes, within the same time, the final description of any contract entered into by mutual agreement or following an invitation to tender that involved an expenditure equal to or lower than \$25,000 when it was entered into, but for which the total amount paid is greater than \$25,000.

The final description of a contract must contain at least

(1) the name of the supplier, the date of the end of the contract and the total amount paid;

(2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and

(3) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 5 of section 39.

40.1. Despite sections 39 and 40, no publication is required in the case of a contract involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.”.

13. The following is inserted after section 41:

**“DIVISION 1.1
REQUEST FOR PAYMENT WITHOUT
ENTITLEMENT**

41.1. A supplier may not knowingly submit to the public body a request for payment that includes an amount to which the supplier is not entitled under the contract.”.

14. Section 45.1 is replaced by the following:

“**45.1.** A violation of the following provisions constitutes an offence:

(1) section 7.2 or section 41.1;

(2) section 37.4 or section 37.5.”.

15. Section 46.1 is amended by inserting “paragraph 2 of section” after “37.5 and”.

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16. Sections 1 to 5, 7 and 8 apply only to calls for tenders issued as of (*insert the date of coming into force of this Regulation*) and section 12 applies to contracts in progress on that date and to contracts entered into as of that date.

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

Regulation to amend the Regulation respecting construction contracts of public bodies

An Act respecting contracting by public bodies (R.S.Q., c. C-65.1, s. 23, 1st par., subpars. 1, 3, 5 to 7 and 15)

1. The Regulation respecting construction contracts of public bodies (R.R.Q., c. C-65.1, r. 5) is amended in section 4

(1) by inserting the following after subparagraph 2 of the second paragraph:

“(2.1) if applicable, a brief description of the options;”;

(2) by adding the following paragraph at the end:

“For the purposes of this Regulation, “option” means an option to renew or an option concerning the additional performance of construction work referred to in subparagraph 2 of the second paragraph.”.

2. Section 5 is amended

(1) by inserting the following after subparagraph 1 of the first paragraph:

“(1.1) if applicable, a description of the options;”;

(2) by adding “or that have expressed in writing their intent to be parties to it and the prior identification of their procurement requirements” at the end of subparagraph 2 of the first paragraph;

(3) by adding “Any public body and any legal person established in the public interest that have expressed their intent to be parties to the joint call for tenders must also deal with the selected contractor, from the time they become parties to the joint call for tender and on the same conditions.” at the end of the second paragraph.

3. Section 7 is amended by adding the following paragraph at the end:

“Compliance requirements must also specify that the filing by the tenderer of several tenders for the same call for tenders entails automatic rejection of all the tenderer’s tenders.”.

4. The following is inserted after section 7:

“7.1. Compliance requirements must also specify that a tender with an unusually low price is non-compliant and must be rejected, after authorization from the chief executive officer of the public body pursuant to Division IV.1.

7.2. A contractor may not submit a tender that contains information the contractor knows to be false or inaccurate, or a document that contains such information or is otherwise falsified.”.

5. The following is inserted after section 12:

“DIVISION II.1
IDENTITY OF CONTRACTORS

12.1. The operator of the electronic tendering system may not disclose information that may be used to determine the number of contractors or the identity of the contractors that have requested the tender documents, except to the public body that makes the call for tenders.

Despite the foregoing, in the case of a call for tenders for construction work related to work relating to a building, the operator must disclose the identity of the contractor that has requested the tender documents if the contractor expressly authorized such disclosure on the electronic tendering system.

12.2. The public body that makes a call for tenders may not, until the opening of tenders, disclose information on the number of contractors or the identity of the contractors that have requested the tender documents or submitted a tender.

Despite the foregoing, where the public body makes a call for tenders in 2 stages, the prohibition in the first paragraph applies until the opening of the tenders submitted at the second stage.”.

6. Section 15 is amended by adding the following paragraph at the end:

“For the purposes of this Regulation, the contract is awarded at the time the identity of the successful tenderer is determined by the public body.”.

7. The following is inserted after section 18:

“DIVISION IV.1
TENDERS WITH AN UNUSUALLY LOW PRICE

18.1. Where a public body deems that the price of a tender seems unusually low, the public body requests the contractor to explain in writing, within 5 days of receiving the request, the reasons warranting such price.

For the purposes of this Division,

(1) the price of a tender is unusually low if, upon completion of an extensive and documented analysis by the committee, it is found that the submitted price cannot enable the contractor to carry out the contract on the conditions set in the tender documents without incurring serious financial losses;

(2) the committee is composed of the person responsible for compliance with contractual rules at the public body and of at least 3 members designated by the chief executive officer of the public body who are not, directly or indirectly, involved in the awarding procedure.

18.2. If the contractor fails to submit explanations within the time set in section 18.1 or if, despite the explanations provided, the public body still considers the price to be unusually low, the public body submits the tender to the committee for analysis.

The person responsible for compliance with contractual rules supervises the committee’s work.

18.3. In analyzing the tender, the committee takes the following factors into account, in particular,

(1) the gap between the tendered price and the public body’s estimate of the expenditure, which must have been confirmed by an extensive and documented audit;

(2) the gap between the tendered price and the price tendered by the other contractors that have submitted a compliant tender;

(3) the gap between the tendered price and the price paid by the public body, or by another public body, under a similar contract, taking into account the economic context if need be; and

(4) the representations made by the contractor concerning the existence of particular facts that have an influence on the tendered price, such as

(a) the conditions for the carrying out of the construction work covered by the contract;

(b) the exceptionally favorable circumstances helping the contractor in the performance of the contract;

- (c) the innovative character of the tender;
- (d) the working conditions of the contractor's employees or, if applicable, subcontractors; and
- (e) government financial assistance.

18.4. The committee states in a report the reasons in support of the committee's conclusions.

The person responsible for compliance with contractual rules sends a copy of the report to the chief executive officer of the public body and, if the conclusions are that the tendered price is unusually low, to the contractor.

18.5. The contractor may, within 10 days of receiving the report referred to in section 18.4, send written comments to the public body.

18.6. The chief executive officer of the public body decides, before the expiry of the period of validity of tenders, whether he or she upholds the committee's conclusions or not and, if they are upheld, authorizes the rejection of the tender.

18.7. The public body informs the minister responsible on an annual basis of the tenders rejected pursuant to section 18.6.”

8. Section 19 is amended by inserting “with one supplier or more” after “contract”.

9. The following is inserted after section 20:

“**20.1.** If the task order contract is entered into with more than one contractor, the performance requests are made to the contractor who submitted the lowest price, unless the contractor cannot perform the contract, in which case the other contractors are solicited according to their respective rank.”.

10. Section 22 is amended by replacing the second and third paragraphs by the following:

“The first stage consists in selecting contractors by soliciting only a quality demonstration in accordance with the evaluation conditions provided for in Schedule 4.

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

The public body opens the tenders only in the presence of the secretary of the selection committee at the designated place and on the date and time fixed in the tender documents.

The secretary evaluates the tenders received, ensuring that the contractors are eligible and their tenders are compliant.

If the secretary rejects a tender because the contractor is ineligible or the tender is non-compliant, the secretary so informs the contractor and gives the reason for the rejection at the time of sending selected contractors their invitation to take part in the second stage.

The public body discloses on the electronic tendering system the names of the contractors who took part in the first stage within 4 business days following the opening of the tenders filed during the second stage.

The second stage consists in inviting selected contractors to submit a tender including only a price.”.

11. Section 26 is amended

(1) by inserting the following paragraphs after the second paragraph:

“The public body opens the tenders only in the presence of the secretary of the selection committee or its representative at the designated place and on the date and time fixed in the tender documents.

The secretary evaluates the tenders received by ensuring the contractors are eligible and their tenders are compliant.”;

(2) by inserting the following paragraphs after the third paragraph:

“If the secretary rejects a tender because the contractor is ineligible or the tender is non-compliant, the secretary so informs the contractor and gives the reason for the rejection at the time of sending selected contractors their invitation to take part in the second stage.

The public body discloses on the electronic tendering system the names of the contractors who took part in the first stage within 4 business days following the opening of the tenders filed during the second stage.”.

12. Section 30 is amended by adding the following paragraph at the end:

“Where a public body makes a call for tenders in 2 stages in order to award a contract, the first paragraph does not apply with respect to tenders submitted during the second stage.”.

13. Section 36 is amended

(1) by adding “indicating, with the necessary modifications, the information provided for in subparagraphs 1, 2 and 4 to 6 of the second paragraph of section 4, except the period for receiving qualification applications that may not be under 25 days following the date of publication of the notice of qualification” at the end of paragraph 1;

(2) by replacing paragraph 3 by the following:

“(3) a public notice of qualification is published again at least once a year so as to allow the qualification of other contractors during the period of validity of the list, which may not exceed 3 years;

(4) a public notice of qualification must remain accessible on the electronic tendering system for the entire period during which a contract may be entered into on the basis of qualification resulting from it.”

14. Section 38 is amended by adding “open only to those providers” at the end.

15. Section 40 is amended by replacing “the ISO 9001: 2000 standard” in the first paragraph by “an ISO standard”.

16. Sections 41 to 43 are replaced by the following:

“DIVISION I
CONTRACTS ENTERED INTO BY PUBLIC CALL
FOR TENDERS

41. Following a public call for tenders, the public body publishes on the electronic tendering system, within 15 days of the awarding of the contract, an initial description of the contract containing at least

(1) the name of the contractor or, in the case of a task order contract involving more than one contractor, the name of the selected contractors;

(2) the nature of the construction work covered by the contract;

(3) the date of the awarding of the contract and its amount or, in the case of a task order contract, the estimated amount of the expenditure or, in the case of a task order contract involving more than one contractor, their respective tendered price; and

(4) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised.

41.1. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 41, the final description of the contract. The period is extended to 120 days for a contract entered into following a joint call for tenders referred to in section 15 of the Act.

The final description of the contract contains at least

(1) the name of the contractor, the date of the end of the contract and the total amount paid;

(2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and

(3) in the case of a task order contract involving more than one contractor, the name of the contractors and the total amount paid to each.

41.2. If a task order contract involves price lists whose scope or layout does not make it possible to publish the results in accordance with sections 41 and 41.1, the public body indicates on the electronic tendering system how to obtain the information related to the results.

DIVISION II
CONTRACTS ENTERED INTO BY MUTUAL
AGREEMENT OR BY INVITATION TO TENDER

42. The public body publishes, on the electronic tendering system, within 30 days of entering into a contract involving an expenditure greater than \$25,000 and entered into by mutual agreement or following an invitation to tender, an initial description of the contract containing at least

(1) the method for awarding the contract;

(2) the name of the contractor;

(3) the nature of the construction work covered by the contract;

(4) the date of the contract and its amount or, in the case of a task order contract, the estimated amount of the expenditure;

(5) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised; and

(6) in the case of a contract entered into by mutual agreement and involving an expenditure above the public tender threshold, the provision of the Act or of this Regulation under which the contract was awarded and, in the case of a contract awarded pursuant to subpara-

graph 4 of the first paragraph of section 13 of the Act, a statement of the reasons invoked in support of not using a public call for tenders.

43. The public body also publishes, on the electronic tendering system, within 90 days of the end of a contract referred to in section 42, a final description of the contract.

The body also publishes, within the same time, the final description of any contract entered into by mutual agreement or following an invitation to tender that involved an expenditure equal to or lower than \$25,000 when it was entered into, but for which the total amount paid is greater than \$25,000.

The final description of a contract must contain at least

(1) the name of the contractor, the date of the end of the contract and the total amount paid;

(2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and

(3) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 5 of section 42.

43.1. Despite sections 42 and 43, no publication is required in the case of a contract involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.”

17. The following is inserted after section 54:

**“DIVISION II.1
REQUEST FOR PAYMENT WITHOUT
ENTITLEMENT**

54.1. A contractor may not knowingly submit to the public body a request for payment that includes an amount to which the contractor is not entitled under the contract.”

18. Section 58.1 is replaced by the following:

“58.1. A violation of the following provisions constitutes an offence:

(1) section 7.2 or section 54.1;

(2) the second paragraph of section 40.1 or any of sections 40.4 to 40.7.”

19. Section 61.1 is amended by inserting “paragraph 2 of” after “subcontractor and”.

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20. Sections 1 to 5, 7 and 10 to 12 apply only to calls for tenders issued as of (*insert the date of coming into force of this Regulation*), section 13 applies only to qualification proceedings started as of that date and section 16 applies to contracts in progress on that date and to contracts entered into as of that date.

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

**Regulation to amend the Regulation
respecting service contracts
of public bodies**

An Act respecting contracting by public bodies (R.S.Q., c. C-65.1, s. 23, 1st par., subpars. 1, 3, 5 to 7 and 15)

1. The Regulation respecting service contracts of public bodies (R.R.Q., c. C-65.1, r. 4) is amended in section 4

(1) by inserting the following after subparagraph 2 of the second paragraph:

“(2.1) if applicable, a brief description of the options;”;

(2) by adding the following paragraph at the end:

“For the purposes of this Regulation, “option” means an option to renew or an option concerning additional services referred to in subparagraph 2 of the second paragraph.”

2. Section 5 is amended

(1) by inserting the following after subparagraph 1 of the first paragraph:

“(1.1) if applicable, a description of the options;”;

(2) by adding “or that have expressed in writing their intent to be parties to it and the prior identification of their procurement requirements” at the end of subparagraph 2 of the first paragraph;

(3) by adding “Any public body and any legal person established in the public interest that have expressed their intent to be parties to the joint call for tenders must also deal with the selected service providers, from the time they become parties to the joint call for tender and on the same conditions.” at the end of the second paragraph.

3. Section 7 is amended by adding the following paragraph at the end:

“Compliance requirements must also specify that the filing by the tenderer of several tenders for the same call for tenders entails automatic rejection of all the tenderer’s tenders.”.

4. The following is inserted after section 7:

7.1. Compliance requirements must also specify that a tender with an unusually low price is non-compliant and must be rejected, after authorization from the chief executive officer of the public body pursuant to Division III.1.

7.2. A service provider may not submit a tender that contains information that the service provider knows to be false or inaccurate, or a document that contains such information or is otherwise falsified.”.

5. The following is inserted after section 9.1:

“DIVISION II.1
IDENTITY OF SERVICE PROVIDERS

9.2. The operator of the electronic tendering system may not disclose information that may be used to determine the number of service providers or the identity of the service providers that have requested the tender documents, except to the public body that makes the call for tenders.

9.3. The public body that makes a call for tenders may not, until the opening of tenders, disclose information on the number of service providers or the identity of the service providers that have requested the tender documents or submitted a tender.

Despite the foregoing, where the public body makes a call for tenders in 2 stages, the prohibition in the first paragraph applies until the opening of the tenders submitted at the second stage.”.

6. Section 12 is amended by adding the following paragraph at the end:

“For the purposes of this Regulation, the contract is awarded at the time the identity of the selected tenderer is determined by the public body.”.

7. The following is inserted after section 15:

“DIVISION III.1
TENDERS WITH AN UNUSUALLY LOW PRICE

15.1. Where a public body deems that the price of a tender seems unusually low, the public body requests the service provider to explain in writing, within 5 days of receiving the request, the reasons warranting such price.

For the purposes of this Division,

(1) the price of a tender is unusually low if, upon completion of an extensive and documented analysis by the committee, it is found that the submitted price cannot enable the service provider to carry out the contract on the conditions set in the tender documents without incurring serious financial losses;

(2) the committee is composed of the person responsible for compliance with contractual rules at the public body and of at least 3 members designated by the chief executive officer of the public body who are not, directly or indirectly, involved in the awarding procedure.

15.2. If the service provider fails to submit explanations within the time set in section 15.1 or if, despite the explanations provided, the public body still considers the price to be unusually low, the public body submits the tender to the committee for analysis.

The person responsible for compliance with contractual rules supervises the committee’s work.

15.3. In analyzing the tender, the committee takes the following factors into account, in particular,

(1) the gap between the tendered price and the public body’s estimate of the expenditure, which must have been confirmed by an extensive and documented audit;

(2) the gap between the tendered price and the price tendered by the other service providers that have submitted a compliant tender;

(3) the gap between the tendered price and the price paid by the public body, or by another public body, under a similar contract, taking into account the economic context if need be; and

(4) the representations made by the service provider concerning the existence of particular facts that have an influence on the tendered price, such as

(a) the conditions for the carrying out of the services covered by the contract;

(b) the exceptionally favorable circumstances helping the service provider in the performance of the contract;

(c) the innovative character of the tender;

(d) the working conditions of the service provider's employees or, if applicable, subcontractors; and

(e) government financial assistance.

15.4. The committee states in a report the reasons in support of the committee's conclusions.

The person responsible for compliance with contractual rules sends a copy of the report to the chief executive officer of the public body and, if the conclusions are that the tendered price is unusually low, to the service provider.

15.5. The service provider may, within 10 days of receiving the report referred to in section 15.4, send written comments to the public body.

15.6. The chief executive officer of the public body decides, before the expiry of the period of validity of tenders, whether he or she upholds the committee's conclusions or not and, if they are upheld, authorizes the rejection of the tender.

15.7. The public body informs the minister responsible on an annual basis of the tenders rejected pursuant to section 15.6."

8. Section 17 is amended by adding the following paragraph at the end.

"Where the public body makes a call for tenders in 2 stages, the first paragraph does not apply with respect to tenders submitted during the second stage."

9. Section 18 is amended by replacing "section 12" by "sections 7.2 and 12 and those of Division III.1".

10. Section 25 is amended

(1) by inserting the following paragraphs after the second paragraph:

"The public body opens the tenders only in the presence of the secretary of the selection committee or its representative at the designated place and on the date and time fixed in the tender documents.

The secretary evaluates the tenders received, ensuring that the service providers are eligible and their tenders are compliant.";

(2) by inserting the following paragraphs after the third paragraph:

"If the secretary rejects a tender because the service provider is ineligible or the tender is non-compliant, the secretary so informs the service provider and gives the reason for the rejection at the time of sending selected service providers their invitation to take part in the second stage.

The public body discloses on the electronic tendering system the names of the service providers who took part in the first stage within 4 business days following the opening of the tenders filed during the second stage.";

(3) by replacing "If only a price is required, sections 10 to 15" in the fifth paragraph by "In that stage, if only a price is required, sections 10 to 15.7".

11. Section 32.1 is struck out.

12. The following is inserted after section 42:

"DIVISION VI.1
CONTRACT RESPECTING THE PRODUCTION
OF FOREST PLANTS

42.0.1. A contract respecting the production of forest plants may be entered into by mutual agreement with a forest plant producer covered by a joint plan established in accordance with the Act respecting the marketing of agricultural, food and fish products (R.S.Q., c. M-35.1).

DIVISION VI.2
DAMAGE INSURANCE CONTRACT

42.0.2. The premium of a damage insurance contract that involves an option to renew may be amended at the time of renewal if the tender documents set the terms and conditions allowing to determine the premium.

DIVISION VI.3
CONTRACT FOR THE REPAIR OF AN AIRCRAFT

42.0.3. A contract for the repair of an aircraft including the rental of spare components required during the repair may be entered into by mutual agreement where the evaluation of the work to be performed cannot be carried out before the beginning of the repair services."

13. Section 43 is amended

(1) by adding “indicating, with the necessary modifications, the information provided for in subparagraphs 1, 2 and 4 to 6 of the second paragraph of section 4, except the period for receiving qualification applications that may not be under 25 days following the date of publication of the notice of qualification” at the end of paragraph 1;

(2) by replacing paragraph 3 by the following:

“(3) a public notice of qualification is published again at least once a year so as to allow the qualification of other service providers during the period of validity of the list, which may not exceed 3 years;

(4) a public notice of qualification must remain accessible on the electronic tendering system for the entire period during which a contract may be entered into on the basis of qualification resulting from it.”

14. Section 45 is amended by adding “only open to those providers” at the end.

15. Section 46 is amended by replacing “a contract” in the English version of the first paragraph by “a task order contract”.

16. Section 48 is amended by replacing the second paragraph by the following:

“If such a contract or subcontract is to be entered into with a service provider or subcontractor outside Québec but within Canada whose business employs more than 100 persons, the service provider or subcontractor must provide an attestation to the effect that the service provider or subcontractor has already made a commitment to implement an employment equity program of the province or territory concerned, as applicable, complying with the provisions of the program.

If such a contract or subcontract must be entered into with a service provider or a subcontractor in Québec or outside Québec but within Canada whose business employs more than 100 persons under federal regulations and subject to the Employment Equity Act (S.C., 1995, c. 44), the service provider or subcontractor must provide an attestation to the effect that the service provider or subcontractor has already made a commitment to implement a federal employment equity program complying with the provisions of the program.”

17. Section 49 is replaced by the following:

“**49.** The Chair of the Conseil du trésor cancels the attestation issued to a service provider referred to in the first paragraph of section 48 who does not fulfil a commitment to implement an employment equity program.

Any service provider whose attestation referred to in section 48 has been cancelled for not fulfilling a commitment may not enter into a service contract with a body referred to in section 47 or a service subcontract related to such contract as long as a new attestation has not been issued.”

18. Section 50 is amended by replacing “the ISO 9001: 2000 standard” in the first paragraph by “an ISO standard”.

19. Sections 51 to 53 are replaced by the following:

**“DIVISION I
CONTRACTS ENTERED INTO BY PUBLIC CALL
FOR TENDERS**

51. Following a public call for tenders, the public body publishes on the electronic tendering system, within 15 days of the awarding of the contract, an initial description of the contract containing at least

(1) the name of the service provider or, in the case of a task order contract involving more than one service provider, the name of the selected service providers;

(2) the nature of the goods covered by the contract;

(3) the date of the awarding of the contract and its amount or, where the amount is not determined and a tariff is applicable, the lump sum negotiated, the amount estimated according to the percentage of the cost of the work or the hourly rate, according to the payment method selected, or, in the case of a task order contract, the estimated amount of the expenditure or, in the case of a task order contract involving more than one service provider, their respective tendered price or the estimated amount of the expenditure where a tariff is applicable; and

(4) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised.

51.1. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 51, the final description of the contract. That period is extended to 120 days for a contract entered into following a joint call for tenders referred to in section 15 of the Act.

The final description of the contract contains at least

- (1) the name of the service provider, the date of the end of the contract and the total amount paid;
- (2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and
- (3) in the case of a task order contract involving more than one service provider, the name of the providers and the total amount paid to each.

51.2. If a task order contract involves price lists whose scope or layout does not make it possible to publish the results in accordance with sections 51 and 51.1, the public body indicates on the electronic tendering system how to obtain the information related to the results.

DIVISION II

CONTRACTS ENTERED INTO BY MUTUAL AGREEMENT OR BY INVITATION TO TENDER

52. The public body publishes, on the electronic tendering system, within 30 days of entering into a contract involving an expenditure greater than \$25,000 and entered into by mutual agreement or following an invitation to tender, an initial description of the contract containing at least

- (1) the method for awarding the contract;
- (2) the name of the service provider;
- (3) the nature of the goods covered by the contract;
- (4) the date of the contract and its amount or, where the amount is not determined and a tariff is applicable, the lump sum negotiated, the amount estimated according to the percentage of the cost of the work or the hourly rate, according to the payment method selected, or, in the case of a task order contract, the estimated amount of the expenditure;
- (5) in the case of a contract that involves options, a description of the options and the total amount of the expenditure that would be incurred if all options were exercised; and
- (6) in the case of a contract entered into by mutual agreement and involving an expenditure above the public tender threshold, the provision of the Act or of this Regulation under which the contract was awarded and, in the case of a contract awarded pursuant to subparagraph 4 of the first paragraph of section 13 of the Act, a statement of the reasons invoked in support of not using a public call for tenders.

53. The public body also publishes, on the electronic tendering system, within 90 days of the end of a contract referred to in section 52, a final description of the contract.

The body also publishes, within the same time, the final description of any contract entered into by mutual agreement or following an invitation to tender that involved an expenditure equal to or lower than \$25,000 when it was entered into, but for which the total amount paid is greater than \$25,000.

The final description of a contract must contain at least

- (1) the name of the service provider, the date of the end of the contract and the total amount paid;
- (2) in the case of a contract that involves options, the type and number of options exercised and the total amount paid by reason of the exercised options; and
- (3) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 5 of section 52.

53.1. Despite sections 52 and 53, no publication is required in the case of a contract involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act or a contract for which no waiver of professional secrecy has been obtained.”

20. The following is inserted after section 54:

“DIVISION I.1 REQUEST FOR PAYMENT WITHOUT ENTITLEMENT

54.1. A service provider may not knowingly submit to the public body a request for payment that includes an amount to which the service provider is not entitled under the contract.”

21. Section 58.1 is replaced by the following:

“**58.1.** A violation of the following provisions constitutes an offence:

- (1) section 7.2 or section 54.1;
- (2) section 50.4 or section 50.5.”

22. Section 62.1 is amended by inserting “paragraph 2 of section” after “50.5 and”.

TRANSITIONAL AND FINAL

23. Despite any inconsistent provision of the Regulation respecting service contracts of public bodies (R.R.Q., c. C-65.1, r. 4), the following rules apply to calls for tenders concerning a task order contract with more than one service provider whose object is the rental of heavy machinery with operator and to the resulting contract:

(1) tender documents and, if applicable, any addendum amending them, may be obtained free of charge from the public body making the call for tenders and the documents must contain clauses relating to the management of the contract to be entered into;

(2) the registered machines are attached to an establishment of the service provider situated in Québec in one of the administrative subdivisions determined in the tender documents or, if there is no such establishment in Québec, in the administrative subdivision situated the nearest to their establishment outside Québec;

(3) a service provider that has not taken part in the call for tenders may, on the conditions provided in the tender documents, register his or her machinery after the date on which the contract is entered into;

(4) a service provider that has registered his or her machinery may, on the conditions provided for in the tender documents, register a new machine after the date on which the contract is entered into;

(5) a service provider may, on the conditions provided for in the tender documents, replace registered machinery by a machine of another class or subclass;

(6) a service provider may, on the conditions provided for in the tender documents, replace a registered machine without changing its class or subclass but by indicating lease conditions different from the conditions applicable to the machine replaced;

(7) the registration of a machine may be transferred to the name of another service provider where the transferor has replaced it by a new machine;

(8) a registered machine may be attached to another establishment of the service provider situated in another administrative subdivision;

(9) where any of the situations described in subparagraphs 3 to 8 of this paragraph occurs, the machinery involved is registered with a “late” notation;

(10) the public body may, to determine the lowest tenderer, take into account, in addition to the hourly rate submitted for the machine, the machine’s age and hourly transportation cost and the operator’s travelling and boarding expenses and thus the performance requests are made on the basis of the weighted coefficient determined for each machine;

(11) the performance requests are made to the service provider that has a registered machine attached to an establishment situated in the administrative subdivision where the service is required and whose machine has obtained the lowest weighted coefficient, unless the provider cannot perform the service, in which case the other providers that have a similar registered machine attached to an establishment situated in that same administrative subdivision are solicited according to their respective rank;

(12) if no machine referred to in subparagraph 11 is available, the machines registered with a “late” notation for an establishment situated in that same administrative subdivision may be considered. The public body then makes the performance request to the service provider whose machine has obtained the lowest weighted coefficient, unless the provider is unable to perform the service, in which case the other providers that have a similar registered machine with a “late” notation are solicited according to their respective rank.

For the purposes of this section,

(1) “weighted coefficient” means the quotient obtained by dividing the sum of the hourly rate submitted for the machine, the machine’s hourly transportation cost, the operator’s hourly travelling expenses and boarding expenses, where applicable, by the maximum total hourly rental rate in effect, as indicated in the booklet *Taux de location de machinerie lourde*, published by the Centre de services partagés du Québec;

(2) “hourly rate submitted for the machine” means the hourly rate indicated by the service provider or, if that rate is higher than the maximum total hourly rental rate in effect or if the machine is registered with a “late” notation, the maximum total hourly rate.

24. Sections 1 to 5, 7 to 10 and 12, to the extent that that section concerns section 42.0.2 of the Regulation respecting service contracts of public bodies, apply only to calls for tenders issued as of (*insert the date of coming into force of this Regulation*).

Section 12, to the extent that that section concerns sections 42.0.1 and 42.0.3 of the Regulation respecting the service contracts of public bodies, applies only to contracts entered into as of that date.

Section 13 applies only to qualification proceedings issued as of that date.

Section 19 applies to contracts in progress on that date and to those entered into as of that date.

Section 23 only applies to calls for tenders issued in the 3 years following that date and to contracts entered into following those calls for tenders.

25. Section 32.1 of the Regulation respecting service contracts of public bodies, as it reads on (*insert the date preceding the date of coming into force of this Regulation*), continues to apply to task order contracts entered into with more than one service provider whose object is the rental of heavy machinery with operator in effect on that date.

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

2212

Draft Regulation

Cultural Heritage Act
(R.S.Q., c. P-9.002)

Definition of construction in a protection area of a classified heritage immovable

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation respecting the definition of construction in a protection area of a classified heritage immovable, appearing below, may be made by the Minister on the expiry of 45 days following this publication.

The draft Regulation mainly defines “construction” in a protection area within the meaning of section 49 of the Cultural Heritage Act.

Further information may be obtained by contacting André Chouinard, Planning and Heritage Consultant, or Chantal Grisé, Heritage Architect Consultant, Direction du patrimoine et de la muséologie, Ministère de la Culture, des Communications et de la Condition féminine, 480, boul. Saint-Laurent, 3^e étage, Montréal (Québec) H2Y 3Y7; telephone: 514 864-8130.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Culture, Communications and the Status of Women, 225, Grande Allée Est, Bloc A, 1^{er} étage, Québec (Québec) G1R 5G5.

*Minister of Culture, Communications
and the Status of Women,*
CHRISTINE ST-PIERRE

Regulation respecting the definition of construction in a protection area of a classified heritage immovable

Cultural Heritage Act
(R.S.Q., c. P-9.002, s. 81, par. 1)

1. “Construction” in a protection area within the meaning of section 49 of the Cultural Heritage Act means

- (1) the building or erection of an immovable, regardless of its function;
- (2) the moving of an existing immovable;
- (3) the expansion of an existing immovable, in particular by the raising in whole or in part of such an immovable, the addition of a balcony or sunroom;
- (4) landscaping, which includes tree planting;
- (5) all foundation work;
- (6) all work related to the installation of inground pools.

2. This Regulation comes into force on 19 October 2012.

2216