

Regulations and other Acts

Gouvernement du Québec

O.C. 430-2013, 24 April 2013

An Act respecting contracting by public bodies
(chapter C-65.1)

Service contracts of public bodies — Amendment

Regulation to amend the Regulation respecting service contracts of public bodies

WHEREAS, under paragraphs 1, 3 and 5 to 7 of section 23 of the Act respecting contracting by public bodies (chapter C-65.1), the Government may make regulations on the matters set forth therein with respect to service contracts of public bodies;

WHEREAS the Government made the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4) which includes provisions concerning public calls for tenders and the publication of information in the electronic tendering system approved by the Government;

WHEREAS it is expedient to amend the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation to amend the Regulation respecting service contracts of public bodies was published in Part 2 of the *Gazette officielle du Québec* of 18 July 2012 with a notice that it could be made by the Government on the expiry of a 45 days following that publication;

WHEREAS the 45-day period has expired;

WHEREAS, in accordance with section 23 of the Act respecting contracting by public bodies, the Conseil du trésor recommends that it be made;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for Government Administration and Chair of the Conseil du trésor:

THAT the Regulation to amend the Regulation respecting service contracts of public bodies, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting service contracts of public bodies

An Act respecting contracting by public bodies
(chapter C-65.1, s. 23, pars. 1, 3 and 5 to 7)

1. The Regulation respecting service contracts of public bodies (chapter 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 of the same nature as those initially required, at the same price and intended to fulfil the needs 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, the description of the options;”;

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

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

“Compliance requirements must also specify that the filing by a service provider of several tenders for the same call for tenders entails automatic rejection of all the service provider’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 of this Chapter.”

5. The following is inserted after section 15:

“**15.1.** The contract is awarded when the tenderer is chosen by the public body or, as the case may be, when the drawing of lots takes place.”

6. 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.”

7. 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 public body 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 public body rejects a tender because the service provider is ineligible or the tender is non-compliant, the public body 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 publishes in the electronic tendering system the names of the service providers who took part in the first stage within 4 business days following the public opening of the tenders filed during the second stage.”;

(3) by replacing “10 to 15” in the fifth paragraph by “10 to 15.1”.

8. Section 27 is amended by replacing “14 and 15” by “14 to 15.1”.

9. The following is inserted after section 29:

**“DIVISION IV.1
TENDERS WITH AN UNUSUALLY LOW PRICE**

29.1. The price of a tender is unusually low if an extensive and documented analysis by the committee referred to in section 29.3 shows that the submitted price cannot enable the service provider to carry out the contract on the conditions set in the tender documents without jeopardizing the performance of the contract.

29.2. Where a public body observes that the price of a tender is unusually low, the public body requests to the service provider that it exposes in writing, within 5 days of receiving such request, the reasons warranting such price.

29.3. If the service provider fails to submit explanations within the time set in section 29.2 or if, despite the explanations provided, the public body still considers the price to seem unusually low, the public body forwards the tender to a committee set up for that purpose for analysis.

The committee is composed of the contract rules compliance monitor of the public body and at least 3 members designated by the chief executive officer of the public body who are not involved in the awarding process.

The contract rules compliance monitor supervises the committee’s work.

29.4. In analyzing the tender, the committee takes the following factors into account:

(1) the gap between the tendered price and the public body’s estimate of the expenditure, which is confirmed by an adequate and rigorous 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; 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 call for tenders;

(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) the government financial assistance received by the service provider.

29.5. The committee states in a report its conclusions and the reasons in support of the committee's conclusions.

If the conclusions are that the tendered price is not unusually low, the contract rules compliance monitor sends a copy of the report to the chief executive officer of the public body.

If the conclusions are that the tendered price is unusually low, the contract rules compliance monitor sends a copy of the report to the service provider.

29.6. The service provider may, within 10 days of receiving the report referred to in section 29.5, send written comments to the contract rules compliance monitor of the public body.

29.7. Having taken cognizance of the comments, if any, the committee decides whether it upholds the conclusions of its report or not.

If the committee does not uphold the conclusions of its report, the contract rules compliance monitor sends a copy of the updated report to the chief executive officer of the public body.

If the committee upholds the conclusions of its report, the contract rules compliance monitor sends a copy of the updated report, if applicable, to the chief executive officer of the public body, who authorizes the rejection of the tender not later than before the expiry of the period of validity of tenders.

29.8. The public body informs the Conseil du trésor of the tenders rejected pursuant to this Division.”

10. Section 32.1 is revoked.

11. 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 (chapter 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.”

12. 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 public 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) the public notice of qualification must remain accessible in the electronic tendering system for the entire period of validity of the list.”

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

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

15. 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 of another province or territory of Canada in respect of which an employment equity program is applicable, and that service provider or subcontractor employs more than 100 persons, the service provider or subcontractor must provide an attestation to the effect that the service provider or subcontractor has made a commitment to implement an employment equity program complying with the program of its province or territory.

If such a contract or subcontract must be entered into with a service provider or a subcontractor of Québec or of another province or territory of Canada, that is governed by the federal legislation, that employs more than 100 persons and in respect of which a federal employment equity program is applicable, the service provider or subcontractor must provide an attestation to the effect that the service provider or subcontractor has made a commitment to implement an employment equity program complying with the federal program.”.

16. 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 fulfill a commitment to implement an employment equity program.

Any service provider whose attestation referred to in section 48 has been cancelled 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.”.

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

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

“DIVISION I
CONTRACTS ENTERED INTO FOLLOWING A
PUBLIC CALL FOR TENDERS

51. Following a public call for tenders, the public body publishes in the electronic tendering system, within 15 days of the conclusion of the contract, the initial description of the contract. That description contains at least

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

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

(3) the date of conclusion of the contract;

(4) one of the following amounts, as applicable:

(a) the amount of the contract;

(b) if a tariff is applicable, the estimated amount of the contract in relation to the payment method selected, that is, a lump sum, on a percentage basis or according to an hourly rate;

(c) in the case of a task order contract, the estimated amount of the expenditure;

(d) in the case of a task order contract involving several service providers, the price submitted by each, respectively;

(5) in the case of a contract that involves options, their description and the total amount of the expenditure that will be incurred if all options are exercised.

51.1. The public body publishes in the electronic tendering system any additional expenditure resulting from an amendment to the contract, within 60 days of the amendment, if the initial amount of the contract referred to in section 51 is increased by more than 10%.

The public body then publishes the amount of the additional expenditure, including the expenditures accumulated prior to the expenditure exceeding 10% of the initial amount of the contract and publishes thereafter each additional expenditure.

51.2. The public body also publishes in 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 task order contract involving several service providers, their respective name and the total amount paid to each of them;

(3) in the case of a contract that involves options, the type and number of options exercised and the total amount paid following their exercise.

51.3. If a task order contract involving several service providers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 51 to 51.2, the public body indicates in the electronic tendering system how to obtain the information related to the results.

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

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

- (1) the method for awarding the contract;
- (2) the name of the service provider or, in the case of a task order contract involving several service providers, the name of those that were retained;
- (3) the nature of the goods covered by the contract;
- (4) the date of conclusion of the contract;
- (5) one of the following amounts, as applicable:
 - (a) the amount of the contract;
 - (b) if a tariff is applicable, the estimated amount of the contract in relation to the payment method selected, that is, a lump sum, on a percentage basis or according to an hourly rate;
 - (c) in the case of a task order contract, the estimated amount of the expenditure;
 - (d) in the case of a task order contract involving several service providers, the price submitted by each, respectively;
- (6) in the case of a contract that involves options, their description and the total amount of the expenditure that will be incurred if all options are exercised; and
- (7) in the case of a contract entered into by mutual agreement and involving an expenditure equal to or 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 excluding the contract from the public call for tenders.

52.1. The public body publishes in the electronic tendering system any additional expenditure resulting from an amendment to the contract, within 60 days of the amendment, if the initial amount of the contract referred to in section 52 is increased by more than 10%.

The public body then publishes the amount of the additional expenditure, including the expenditures accumulated prior to the expenditure exceeding 10% of the initial amount of the contract and publishes thereafter each additional expenditure.

52.2. The public body also publishes, in the electronic tendering system, within 90 days of the end of a contract referred to in section 52, a final description of the contract. That period is increased to 120 days for a contract entered into for the benefit of joint public bodies referred to in section 15 of the Act.

The body also publishes, within the same time, the final description of any contract that, at the time of its conclusion, was to involve an expenditure lower than \$25,000, but for which the total amount paid is equal to or 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 task order contract involving several service providers, their respective name and the total amount paid to each of them;
- (3) in the case of a contract that involves options, the type and number of options exercised and the total amount paid following their exercise; and
- (4) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 to 6 of section 52 and in section 52.1.

52.3. If a delivery order contract involving several service providers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 52 to 52.2, the public body indicates in the electronic tendering system how to obtain the information related to the results

53. Despite sections 52 to 52.3, 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.”

19. Section 59 is revoked.

TRANSITIONAL AND FINAL

20. Section 32.1 of the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4), as they read on 22 May 2013, continues to apply to task order

contracts entered into with several service providers before 23 May 2013 and whose object is the rental of heavy machinery with operator.

21. Despite sections 9.1, 15.1 and 32 of the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4), the following rules apply to calls for tenders concerning a task order contract with several service providers 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. 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) in the administrative subdivision where the service is required, the performance requests are made to the service provider that has a machine registered therein according to paragraph 2 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 machine registered according to paragraph 2 and 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 and situated in the administrative subdivision where the service is required may then be considered. The public body makes the performance request to the service provider whose machine has obtained the lowest weighted coefficient, unless the service provider is unable to perform the service, in which case the other service providers that have a similar machine 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.

This section applies only to call for tenders issued within 3 years of 23 May 2013 and to contracts entered into following those calls for tenders.

22. Sections 1 to 4, 6, 7, 9 and 11, 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 23 May 2013.

Section 12 applies only to qualification proceedings issued as of that date.

Section 18, insofar as it concerns sections 51, 51.2, 51.3, 52, 52.2, 52.3 and 53 of the Regulation respecting service contracts of public bodies, applies to contracts in progress on 15 September 2013, regardless of the periods indicated therein, and to contracts entered into from that date.

Section 18, insofar as it concerns sections 51.1 and 52.1 of the Regulation respecting service contracts of public bodies, applies to any additional expenditure resulting from an amendment to the contract made as of 15 September 2013.

23. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 18, which comes into force on 15 September 2013.

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Gouvernement du Québec

O.C. 431-2013, 24 April 2013

An Act respecting contracting by public bodies (chapter C-65.1)

Construction contracts of public bodies — Amendment

Regulation to amend the Regulation respecting construction contracts of public bodies

WHEREAS, under paragraphs 1, 3 and 5 to 7 of section 23 of the Act respecting contracting by public bodies (chapter C-65.1), the Government may make regulations on the matters set forth therein with respect to construction contracts of public bodies;

WHEREAS the Government made the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5) which includes provisions concerning public calls for tenders and the publication of information in the electronic tendering system approved by the Government;

WHEREAS it is expedient to amend the Regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation to amend the Regulation respecting construction contracts of public bodies was published in Part 2 of the *Gazette officielle du Québec* of 18 July 2012 with a notice that it could be made by the Government on the expiry of a 45 days following that publication;

WHEREAS the 45-day period has expired;

WHEREAS, in accordance with section 23 of the Act respecting contracting by public bodies, the Conseil du trésor recommends that it be made;

WHEREAS it is expedient to make the Regulation with amendments;

IT IS ORDERED, therefore, on the recommendation of the Minister responsible for Government Administration and Chair of the Conseil du trésor:

THAT the Regulation to amend the Regulation respecting construction contracts of public bodies, attached to this Order in Council, be made.

JEAN ST-GELAIS,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting construction contracts of public bodies

An Act respecting contracting by public bodies (chapter C-65.1, s. 23, pars. 1, 3 and 5 to 7)

1. The Regulation respecting construction contracts of public bodies (chapter 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 performance of additional construction work of the same nature as the work initially required, at the same price and intended to fulfil the needs 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, the description of the options;”;

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