

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.

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

“Compliance requirements must also specify that the filing by a contractor of several tenders for the same call for tenders entails automatic rejection of all the contractor’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 18:

“**18.1.** 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.

DIVISION IV.1 TENDERS WITH AN UNUSUALLY LOW PRICE

18.2. The price of a tender is unusually low if an extensive and documented analysis by the committee referred to in section 18.4 shows that the submitted price cannot enable the contractor to carry out the contract on the conditions set in the tender documents without jeopardizing the performance of the contract.

18.3. Where a public body observes 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.

18.4. If the contractor fails to submit explanations within the time set in section 18.3 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 in 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.

18.5. 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 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; 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 call for tenders;

(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) the government financial assistance received by the contractor.

18.6. 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 person responsible for compliance with contractual rules sends a copy of the report to the contractor.

18.7. The contractor may, within 10 days of receiving the report referred to in section 18.6, send written comments to the contract rules compliance monitor in the public body.

18.8. 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.

18.9. The public body informs the Conseil du trésor of the tenders rejected pursuant to section 18.8.”

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

7. The following is inserted after section 20:

“**20.1.** If the task order contract is entered into with several contractors, 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.”

8. 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 or his or her 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 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 publishes in 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.”

9. 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 his or her 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 publishes in 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.”.

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

“Where a public body makes a call for tenders in 2 stages, the first paragraph applies only with respect to tenders submitted during the second stage.”.

11. 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 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 contractors 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.”.

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

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

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

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

41. 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 contractor or, in the case of a task order contract involving several contractors, the name of the selected contractors;

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

(3) the date of conclusion of the contract

(4) the amount of the contract 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 several contractors, the price submitted by each, respectively; and

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

41.1. 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 41 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.

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

(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.

41.3. If a task order contract involving several contractors involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 41 to 41.2, 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**

42. 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, the initial description of the contract. That description contains at least

(1) the method for awarding the contract;

(2) the name of the contractor or, in the case of a task order contract involving several contractors, the name of those that were retained;

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

(4) the date of conclusion of the contract;

(5) the amount of the contract 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 several contractors, 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 exempting the contract from the public call for tenders.

42.1. 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 42 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.

42.2. The public body also publishes, in the electronic tendering system, within 90 days of the end of a contract referred to in section 42, the final description of the contract. That period is extended 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 contractor, the date of the end of the contract and the total amount paid;

(2) in the case of a task order contract involving several contractors, 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 42 and section 42.1.

42.3. If a task order contract involving several contractors involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 42 to 42.2, the public body indicates on the electronic tendering system how to obtain the information related to the results.

43. Despite sections 42 to 42.3, 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.”

15. Section 59 is revoked.

16. Section 60 is amended by replacing “minister responsible” by “Conseil du trésor”.

FINAL

17. Sections 1 to 4, 5, to the extent that that section concerns the provisions of sections 18.2 to 18.9 of the Regulation respecting construction contracts of public bodies, and sections 8 to 10 apply only to calls for tenders issued as of 23 May 2013.

Section 11 applies only to qualification proceedings started as of 23 May 2013.

Section 14, insofar as it concerns sections 41, 41.2, 41.3, 42, 42.2, 42.3 and 43 of the Regulation respecting construction 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 14, insofar as it concerns sections 41.1 and 42.1 of the Regulation respecting construction contracts of public bodies, applies to any additional expenditure resulting from an amendment to the contract made as of 15 September 2013.

18. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 14, which comes into force on 15 September 2013.

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Gouvernement du Québec

O.C. 432-2013, 24 April 2013

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

Supply contracts of public bodies — Amendment

Regulation to amend the Regulation respecting supply 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 supply contracts of public bodies;

WHEREAS the Government made the Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2) which includes provisions concerning public calls for tenders and the publication of information in the electronic tendering system approved by the Government;