

into the mediation expires before that date, or the mediation is ended before the dispute is resolved before that date, the time period set out in section 12, as replaced by section 7 of this Regulation, begins to run as of (*insert the date of coming into force of this Regulation*).

In addition, where the group parenting and mediation information session is given before (*insert the date of coming into force of this Regulation*), the time period set out in section 12.1, as inserted by section 8 of this Regulation, begins to run as of that date.

10. Fees that are payable by the Service before (*insert the date of coming into force of this Regulation*) for an information session on the mediation process other than a group session, and for a mediator's report stating the absence of the parties, or one of the parties, at such an information session, or mentioning a statement from a party that the party cannot attend an information session for a valid reason, continue to be payable by the Service in accordance with the provisions of the Regulation as it read on (*insert the date that is one day before the date of coming into force of this Regulation*).

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

102342

Draft Regulation

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

Contracts in the field of information technologies and supply, service and construction contracts of public bodies

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting contracting by public bodies in the field of information technologies, 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 Regulation respecting contracting by public bodies in the field of information technologies determines the specific conditions applicable to contracts entered into by a public body subject to the Act respecting contracting

by public bodies (chapter C-65.1) where they are mainly intended for the acquisition of goods or the provision of services in the field of information technologies.

In compliance with any applicable intergovernmental agreement, the draft Regulation promotes the principles stated in section 2 of the Act, in particular transparency in contracting processes, the honest and fair treatment of tenderers and accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.

Since contracts likely to be entered into in the field of information technologies are supply or service contracts, the draft Regulation retains for the most part the structure and substance of the regulations already in force that apply to those categories of contracts, while adding certain particularities specific to information technologies.

The draft Regulation proposes, among other things, a special competitive tendering procedure involving a competitive dialogue and introduces in certain circumstances and on certain conditions the possibility of entering into a contract by mutual agreement for the acquisition of cloud goods and services.

The draft Regulation to amend the Regulation respecting supply contracts of public bodies, 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 each make consequential adjustments to the rules proposed by the draft Regulation respecting contracting by public bodies in the field of information technologies. Those adjustments concern mainly the content of the notice and tender documents, compliance of tenders and a requirement for the public body, following the awarding of a contract and on the written request of a tenderer, to provide the tenderer with the results of the tender evaluation.

Also, the draft Regulation to amend the Regulation respecting supply contracts of public bodies integrates the provisions of the draft Regulation respecting contracting by public bodies in the field of information technologies regarding the conduct of compliance tests on the proposed goods, the taking into account of the total acquisition cost to award the contract, as well as the replacement of goods during the term of a delivery order contract.

Lastly, the draft Regulations described in this notice introduce measures respecting the transmission of tenders by electronic means.

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

Further information may be obtained by contacting Robert Villeneuve, Director of public contract regulations, Secrétariat du Conseil du trésor, 875, Grande Allée Est, bureau 2.379, Québec (Québec) G1R 5R8; telephone: 418 643-0875, extension 4901; fax: 418 646-4613; email: robert.villeneuve@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 Ongoing Program Review and Chair of the Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8.

MARTIN COITEUX,
*Minister responsible for Government
Administration and Ongoing Program Review
and Chair of the Conseil du trésor*

Regulation respecting contracting by public bodies in the field of information technologies

An Act respecting contracting by public bodies (chapter C-65.1, s. 23, pars. 1, 3, 5 to 7, 14 and 15, and s. 24.2)

CHAPTER I SCOPE

1. This Regulation applies to supply contracts and service contracts referred to in subparagraphs 1 and 3, respectively, of the first paragraph of section 3 of the Act respecting contracting by public bodies (chapter C-65.1) and to contracts of enterprise that are considered as service contracts under the third paragraph of that section where they are principally intended, with regard to the estimated expenditure of the contract, for the acquisition of goods or the provision of services in the field of information technologies.

For the purposes of this Regulation, a contract is for the acquisition of goods or the provision of services in the field of information technologies when it seeks to ensure or enable functions of information processing and communication by electronic means, including the collection, transmission, display and storage of information.

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

CHAPTER II PUBLIC CALL FOR TENDERS PROCESS

DIVISION I GENERAL

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

If a public body makes a public call for tenders to award a contract involving an expenditure below the public tender threshold referred to in subparagraph 1 of the first paragraph of section 10 of the Act, the tender closing date set out in subparagraph 10 of the second paragraph of section 4, the requirement as to the place of the establishment set out in subparagraph 2 of the first paragraph of section 6, the time for sending an addendum set out in the second paragraph of section 12 and the composition of the selection committee provided for in the second paragraph of section 28 may differ.

In the case of a delivery order contract or a task order contract referred to in Chapter IV, the public call for tenders must, if applicable, comply with the special provisions of that chapter.

DIVISION II PUBLIC CALL FOR TENDERS

§1. Tender documents

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

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

- (1) the name of the public body;
- (2) a brief description of the procurement requirements and the place where the goods are to be delivered or the services rendered, as the case may be;
- (3) a brief description of the options, if applicable;
- (4) an indication that a competitive dialogue will be held, if applicable;
- (5) the nature and amount of any required tender security;
- (6) whether or not an intergovernmental agreement within the meaning of section 2 of the Act applies;

- (7) the place where information may be obtained;
- (8) an indication that the tender documents may only be obtained through the electronic tendering system;
- (9) if applicable, an indication that tenders may be transmitted electronically and that such transmission may only be done through the electronic tendering system;
- (10) the place and the closing date and time for the reception and opening of tenders other than tenders filed following a competitive dialogue; the time for receiving tenders may not be less than 15 days after the date on which the notice is published; and
- (11) the fact that the public body is not bound to accept any tender.

For the purposes of this Regulation, “option” means an option to renew or an option concerning, as the case may be, the acquisition of additional goods identical to the goods initially acquired, taking into account any technological changes or additional services of the same nature as those initially required, offered at the same price and intended to fulfil the needs referred to in subparagraph 2 of the second paragraph.

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

- (1) a description of the procurement requirements and conditions on which the goods or services are to be delivered or provided, as the case may be;
- (2) if applicable, the description of the options;
- (3) the eligibility requirements for suppliers or service providers and the compliance requirements for tenders;
- (4) a list of the documents or other items required from suppliers or service providers;
- (5) the tender opening procedure;
- (6) where a quality evaluation of tenders is to be made, the evaluation rules, including the criteria selected and, for the purposes of Schedule 2, their respective weighting;
- (7) the contract award rule, including any element used as a basis by the public body for the purpose of adjusting the price so as to calculate the total acquisition cost referred to in section 16, the calculation to be applied before awarding the contract and the conditions governing the competitive dialogue;
- (8) in the case of a service contract, the contract to be signed; and

- (9) any other particular required under this Regulation.

§2. Eligibility requirements

6. In order to submit a tender, a supplier or a service provider must meet the following eligibility requirements:

- (1) have all the necessary qualifications, authorizations, permits, licences, registrations, certificates, accreditations and attestations;
- (2) have in Québec or in a territory covered by an applicable intergovernmental agreement an establishment where activities are carried on on a permanent basis, clearly identified under the tenderer’s name and accessible during regular business hours;
- (3) meet any other eligibility requirement specified in the tender documents.

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

A tenderer who fails to comply with any of those requirements is ineligible.

7. Provided that it is specified in the tender documents, a public body may refuse to consider any tenderer who, in the 2 years preceding the tender opening date, has been given an unsatisfactory performance report by the public body, has failed to follow up on a tender or contract, or has had a contract cancelled because of failure to comply with the contract conditions.

§3. Compliance requirements

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

- (1) the closing date and time for receiving tenders have not been complied with and, in the case of a tender sent in paper form, the place designated for its reception has not been complied with;
- (2) in the case of a tender sent in paper form, the required signature of an authorized person is missing on the document evidencing the tenderer’s undertaking or the document concerning the tendered price;
- (3) the tender is conditional or restrictive;

(4) in the case of a tender transmitted electronically, the fact that the tender was not transmitted through the electronic tendering system or a tender that is unintelligible, infected or otherwise illegible once its integrity has been established;

(5) the fact that the price submitted and the quality demonstration are not presented separately as required by the second paragraph of section 15; and

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

Compliance requirements must also specify that the filing by a tenderer of several tenders for the same call for tenders entails the automatic rejection of all his or her tenders. For the purposes of this paragraph, transmitting the same tender by electronic means and on paper form is considered as the filing of several tenders.

9. Compliance requirements must also indicate the cases that will entail the rejection of the tender if the tenderer fails to remedy an irregularity indicated by the public body within the period set by the public body or, in the case provided for in subparagraph 4 of this paragraph, within the 2 following business days. Such cases are

(1) the absence of a required document, other than a document whose absence entails the automatic rejection of a tender;

(2) in the case of a tender sent in paper form, the absence of a signature required from an authorized person on a document other than those in respect of which such an absence entails the automatic rejection of a tender;

(3) an erasure or correction to the tendered price that is not initialed;

(4) the fact that the integrity of a tender transmitted electronically could not be established; and

(5) any other case stated in the tender documents.

A tender transmitted electronically within the period set in the first paragraph to remedy the faulty integrity of a tender sent previously is substituted for the previous tender as soon as its integrity is established. That tender is then deemed to have been transmitted before the tender closing date and time.”

10. 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 of Chapter III.

11. Where the call for tenders is for the acquisition of goods, compliance requirements must also specify that a tender is not compliant and must be rejected in the following cases:

(1) all the proposed goods do not satisfy the technical specifications required in the tender documents;

(2) if applicable, all the proposed goods fail to pass the compliance tests provided for in the tender documents.

§4. Amendment to and obtention of tender documents

12. A public body may amend the tender documents by means of an addendum sent to the suppliers or service providers concerned by the call for tenders.

If the amendment is likely to affect the prices, the addendum must be sent at least 7 days before the tender closing time; if that 7-day period cannot be complied with, the closing date must be extended by the number of days needed to ensure compliance with the minimum period.

Provided that it is specified in the tender documents, the public body may reserve the right to not consider a request for details made by a supplier or a service provider, as the case may be, if the request is sent to the public body less than 24 hours before the tender closing date and time.

13. Tender documents and, if applicable, any addendum amending them may only be obtained through the electronic tendering system.

§5. Electronic transmission of tender

14. A tender may be transmitted electronically only through the electronic tendering system.

CHAPTER III

AWARDING MODES AND TENDER PROCESSING

DIVISION I

AWARDING MODES

§1. General

15. To award a contract in the field of information technologies, the public body solicits only a price or evaluates the quality of a tender and solicits a price then selects the most economically favorable tender.

Where, for a same stage, a price is solicited and a quality evaluation is to be made, the price and the quality demonstration must be submitted separately to allow for the application of the first paragraph of section 28.

16. To determine the lowest price or the lowest adjusted price for the purposes of awarding a contract under section 17, 18, 19, 23 or 44, as the case may be, that includes the acquisition of goods, a public body may consider additional costs related to that acquisition. Those additional costs are added to the tendered or adjusted prices, as applicable, in accordance with section 8 of Schedule 2, so as to establish the total acquisition cost for the public body.

Price adjustment made in accordance with the first paragraph must be based on quantifiable and measurable elements identified in the tender documents. Price adjustment must also be carried out after the filing of tenders according to the information contained in each tender.

For the purposes of this Regulation, the additional costs are the costs that would be borne by the public body during the useful life of the goods acquired. They may include, in particular, installation, maintenance, support, configuration, licence, progress, interoperability and training costs that are not included in the tendered price.

§2. Contract awarded to the lowest price

17. Where only a price is solicited by a public body for the purposes of awarding a contract, the public body awards the contract to the tenderer who submitted the lowest price.

§3. Contract awarded following quality evaluation

18. Where, for the purposes of awarding a contract, a public body evaluates the quality of tenders based on the attainment of the minimum quality level, the public body must apply the terms and conditions for evaluation provided for in Schedule 1 and award the contract to the tenderer who submitted the lowest price.

Where, for the same purposes, the public body evaluates the quality of tenders based on the measurement of the quality level followed by the calculation of the quality-price ratio, the public body must apply the terms and conditions for evaluation provided for in Schedule 2 and award the contract to the tenderer who submitted the lowest adjusted price.

§4. Service contract awarded following a call for tenders involving 2 stages

19. A public body may issue a call for tenders in 2 stages in order to award a service contract.

The public body first selects service providers by soliciting only a quality demonstration in accordance with Schedule 1 or with sections 1 to 7 of Schedule 2. In the

latter case, the tender documents must indicate the number of selected tenderers who will be invited to take part in the second stage.

The public body then invites the selected service providers to submit a tender including either a price only, or a quality demonstration and a price. In the former case, the public body awards the contract to the tenderer who submitted the lowest price; in the latter case, it applies the terms and conditions for evaluation provided for in Schedule 2 and awards the contract to the tenderer who submitted the lowest adjusted price.

§5. Service contract awarded following a call for tenders involving a competitive dialogue

20. Where the public body's needs involve a high level of complexity, the public body may, for awarding a service contract after the chief executive officer's authorization, issue a call for tenders involving a competitive dialogue.

21. The public body first invites service providers to file an initial tender so as to evaluate its quality in accordance with sections 1 to 7 of Schedule 2. The evaluation pertains, in particular, to the capacity of each tenderer and each proposed solution to fulfil the public body's needs.

The tender documents must indicate the number of tenderers who will be invited to take part in the competitive dialogue, which number may not be less than 3.

Despite the foregoing, if only 2 tenderers meet the selection criteria, the public body may, after the chief executive officer's authorization, continue the procedure with those tenderers.

22. The public body then holds a dialogue with each selected tenderer. The dialogue must take place in the presence of an independent process auditor designated by the public body. The auditor's main duty is to ensure that the dialogue is held in a manner that is fair to all tenderers and ensures the transparency of the contracting process under way.

The competitive dialogue is essentially aimed at defining or developing with each selected tenderer a solution likely to fulfil the public body's needs, which solution will be the basis on which each tenderer will be invited to submit a final tender. In particular, the dialogue pertains to the technological means capable of fulfilling the public body's needs, the timetable for providing the services, as well as various contractual terms and conditions.

23. If the public body is of the opinion, after having had a dialogue with each of the selected tenderers, that there is a number of solutions likely to fulfil its needs, the

public body invites them to submit, within the period it sets, a final tender including a price as well as a quality demonstration with regard to the solution discussed and defined during the dialogue.

The public body applies the terms and conditions provided for in Schedule 2, and then awards the contract to the service provider who submitted the lowest adjusted price.

DIVISION II **TENDER PROCESSING**

24. If a tender is transmitted electronically, the public body must ensure, at the opening of tenders, the integrity of the tender.

25. When awarding a contract in accordance with section 17 or 18, the public body opens the tenders publicly in the presence of a witness at the designated place and on the date and at the time set in the tender documents, unless the tenders are in the form of a price list whose scope or layout does not make it possible to specify a total price.

At the public opening, the public body discloses the names of the tenderers who submitted a tender in paper form or a tender by electronic means whose integrity has been established. If the call for tenders is for awarding a contract without quality evaluation, the respective total price of those tenders is also disclosed, subject to subsequent verifications.

Within 4 business days, the public body must make the results of the public opening of tenders available on the electronic tendering system and add, if applicable, the information referred to in the second paragraph with regard to the tenders whose integrity has been established since the opening.

26. Where a public body issues a call for tenders involving more than one stage under section 19 or section 20, tenders submitted at the first stage are opened 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 at the time set in the tender documents.

The public body publishes on the electronic tendering system the names of the tenderers who have participated in the first stage within 4 business days of the public opening of the tenders submitted at the last stage and adds, if applicable, the names of the tenderers who filed at the first stage a tender whose integrity has been established since the opening of the tenders referred to in the first paragraph.

In the case of a call for tenders involving 2 stages, the provisions of section 25 apply, with the necessary modifications, in respect of the tenders submitted at the second stage.

In the case of a call for tenders involving a competitive dialogue, the public body publicly opens the tenders submitted at the last stage in the presence of a witness at the designated place, on the date and at the time set when the selected tenderers are invited to submit a final tender. The provisions of the second and third paragraphs of section 25 apply, with the necessary modifications.

27. The public body evaluates the tenders received, ensuring that the tenderers are eligible and their tenders are compliant.

Despite the foregoing, where the tender documents provide for compliance tests, the tests are first carried out in respect of the goods proposed by the tenderer who, in the absence of those tests, would be the successful tenderer. The tests are then carried out in respect of the goods proposed by the next tenderer only if the goods proposed by the preceding tenderer fail the compliance tests and so forth until the tests are successful. However, in the case of a delivery order contract entered into with a number of suppliers, the compliance tests are carried out in respect of the goods proposed by all the selected tenderers.

If the public body rejects a tender because it is not compliant or because the tenderer is ineligible, the public body so informs the tenderer by indicating the reason for rejection not later than 15 days after the contract is awarded. However, if rejection takes place at the first stage of a call for tenders involving more than one stage, the public body so informs the tenderer at the time an invitation to take part in the next stage is sent to the selected providers.

28. Tenders submitted for a call for tenders involving a demonstration of quality are evaluated by a selection committee set up for that purpose by the public body. The committee is to evaluate quality without knowing the price submitted.

The selection committee must be composed of a secretary in charge of coordinating activities and of at least 3 members.

29. The public body awards the contract in accordance with the provisions of Division I of this Chapter.

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

(1) only 1 tenderer submitted a compliant tender or, if the contract is awarded following a quality evaluation, only one tenderer submitted an acceptable tender;

(2) the tenderer agreed to a new price; and

(3) it is the only change made to the conditions set in the tender documents or to the tender in the course of the negotiation.

30. If several tenderers obtain identical results following a call for tenders, the successful tenderer is determined by a drawing of lots.

31. The contract is awarded when the successful tenderer is chosen by the public body or, as the case may be, when the drawing of lots takes place.

32. Where, for the purpose of awarding the contract, the public body has considered additional costs in accordance with section 16, the public body sends to each tenderer the value of the additional costs concerning the tenderer within 15 days of the awarding of the contract.

33. Where the awarding process includes quality evaluation, the public body informs each tenderer of the results of the tender quality evaluation for each of the stages including such evaluation in which the tenderer has participated. Such communication takes place within 15 days of awarding the contract or, in the case of sections 19 and 21, at the time an invitation to participate in the next stage is sent to the selected tenderers.

If Schedule 1 applies, the particulars sent to tenderers are

(1) confirmation that their tender was accepted or not; and

(2) as the case may be, the names of the tenderers qualified for the next stage or the successful tenderer's name and tendered price.

If Schedule 2 applies, the particulars sent to tenderers are

(1) confirmation that their tender was accepted or not;

(2) their quality score, adjusted price and rank according to the adjusted prices; and

(3) as the case may be, the names of the tenderers qualified for the next stage or the successful tenderer's name, quality score, tendered price and the resulting adjusted price.

In addition, on the written request of a tenderer sent within 30 days after the communication made under the first paragraph, the public body must present to the tenderer the results of the tender evaluation for each criterion used to evaluate quality, and briefly set out the reasons justifying the fact that the tender was not accepted. That feedback must be provided, as the case may be, within 30 days after the date of receipt of the tenderer's request if the request was sent after the awarding of the contract, or within 30 days after the awarding of the contract if the request was sent before that date.

DIVISION III

TENDERS WITH AN UNUSUALLY LOW PRICE

34. The price of a tender is unusually low if an extensive and documented analysis by the committee referred to in section 36 shows that the submitted price cannot enable the tenderer to carry out the contract on the conditions set in the tender documents without jeopardizing the performance of the contract.

35. Where a public body observes that the price of a tender seems unusually low, the public body requests that the tenderer expose in writing, within 5 days of receiving such request, the reasons warranting such price.

36. If the tenderer fails to submit explanations within the period set in section 35 or if, despite the explanations provided, the public body still considers the price to seem unusually low, the public body forwards the tender for analysis to a committee set up for that purpose.

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.

37. 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 tenderers 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;

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

(a) the method of manufacturing the goods covered by the call for tenders, and the components forming the goods, or the method of providing the services covered by the call for tenders, as the case may be;

(b) the exceptionally favorable circumstances that would help the tenderer in the performance of the contract;

(c) the innovative character of the tender;

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

(e) the government financial assistance received by the tenderer.

38. 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 tenderer.

39. The tenderer may, within 10 days of receiving the report referred to in section 38, send written comments to the contract rules compliance monitor of the public body.

40. 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.

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

CHAPTER IV SPECIAL RULES FOR AWARDING CONTRACTS

DIVISION I DELIVERY ORDER CONTRACTS

42. A public body may, for a maximum period of 5 years including any renewal, enter into a delivery order contract in the field of information technologies with one or more suppliers when the procurement requirements are recurrent and the quantity of goods and the rate or frequency at which they are acquired are uncertain.

43. The public body must indicate in the tender documents the approximate quantities of goods likely to be acquired or, failing that, the approximate monetary value of the contract and, where applicable, the places of delivery.

44. If the delivery order contract is entered into with more than one supplier, the orders are directed to the supplier who, in respect of the goods to be acquired, submitted the lowest price, unless the supplier cannot fill the orders, in which case the other suppliers are solicited according to their respective rank for the same goods.

Such orders may, however, be awarded to any of the selected suppliers whose price submitted in respect of the goods to be acquired does not exceed the lowest price by more than 10%, so long as the awarding rule is authorized by the chief executive officer of the public body before the notice of a call for tenders is published.

45. A delivery order contract may allow the selected supplier to replace goods covered by the contract by new goods provided that they comply with the technical specifications required and provided that their price does not exceed the price of the replaced goods.

Where the delivery order contract is entered into with more than one supplier, each of them may reduce the price of the goods covered by the contract or replace them in accordance with the first paragraph.

The public body must specify in the tender documents the conditions to be met to make such changes as well as the mechanism to inform the other selected suppliers of the changes made by a competing supplier.

For the purposes of section 44, the price of goods reduced by a supplier under the second paragraph becomes the price submitted by the supplier for the goods concerned.

DIVISION II

TASK ORDER CONTRACTS

46. A public body may, for a maximum period of 5 years including any renewal, enter into a task order contract in the field of information technologies with one or more service providers when the procurement requirements are recurrent and the number of requests and the rate or frequency at which they are to be performed are uncertain.

47. The public body must indicate in the tender documents the extent of the services that the public body intends to request or, failing that, the approximate monetary value of the contract.

48. If the task order contract is entered into with more than one service provider, the performance requests are made to the service provider who submitted the lowest price, unless the provider cannot perform the service, in which case the other providers are solicited according to their respective rank.

CHAPTER V

SPECIAL CONTRACTS

DIVISION I

CONTRACTS FOR THE ACQUISITION OF CLOUD GOODS OR SERVICES

49. A contract for the acquisition of cloud goods or services may be entered into by mutual agreement with a supplier or a service provider who has concluded a framework agreement with the Centre de services partagés du Québec under Order in Council (insert the number and date of the Order in Council) made pursuant to the second paragraph of section 5 of the Act respecting the Centre de services partagés du Québec (chapter C-8.1.1), provided that

(1) the contract concerns goods or services referred to in the framework agreement;

(2) the term of the contract does not exceed 3 years including any renewal; and

(3) the supplier or service provider chosen by the public body is the more advantageous choice for the public body.

To determine the more advantageous choice, the public body must base itself

(1) on the price exclusively; or

(2) after authorization from its chief executive officer, on one or more other criteria related to the object of the contract, such as technological compatibility, the accessibility of the goods or services, performance and technical assistance.

DIVISION II

CONTRACTS RELATING TO RESEARCH AND DEVELOPMENT OR TEACHING

50. A supply contract in the field of information technologies relating to research and development or teaching activities may be entered into by mutual agreement where, due to technical or scientific reasons, only one supplier is able to carry it out and there is no other alternate solution or substitute goods.

DIVISION III

CONTRACTS FOR ACTIVITIES ON FOREIGN SOIL

51. A contract in the field of information technologies for the activities on foreign soil of a delegation general, a delegation or another form of representation of Québec abroad, established pursuant to section 28 of the Act respecting the Ministère des Relations internationales (chapter M-25.1.1), may be entered into by mutual agreement even if it involves an expenditure equal to or above the public tender threshold provided for in section 10 of the Act. The contract is awarded in a manner consistent with the principles stated in section 2 of the Act.

CHAPTER VI

CERTIFICATION OF GOODS

52. A public body must certify the goods if it is expedient to ascertain before proceeding with a call for tenders that the goods meet a recognized standard or an established technical specification.

53. A public body may use a certification process for goods if

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

(2) a list of the certified goods is published on the electronic tendering system and every supplier is informed of the goods that are entered on the list or the reason for refusal if entry is denied; and

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

54. Except in the cases described in section 13 of the Act, every contract in the field of information technologies subsequent to the certification of goods is limited to the certified goods only and, if such a contract involves an expenditure equal to or above the public tender threshold, it must be awarded through a public call for tenders open only to the suppliers of the certified goods.

CHAPTER VII QUALIFICATION OF SERVICE PROVIDERS

55. A public body may qualify service providers prior to the acquisition process if

(1) the qualification of service providers is preceded by a public notice to that effect on the electronic tendering system indicating, with the necessary modifications, the information provided for in subparagraphs 1, 2 and 6 to 10 of the second paragraph of section 4, except the period for receiving applications for qualification that may not be under 25 days following the date of publication of the public notice of qualification;

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

(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; and

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

56. Where the public body evaluates the quality of applications for qualification, it sets up a selection committee in accordance with the second paragraph of section 28 and applies the evaluation conditions in Schedule 1 or in sections 1 to 7 of Schedule 2.

57. Except in the cases described in section 13 of the Act, every contract in the field of information technologies subsequent to the qualification of service providers is limited to qualified providers only and, if such a contract involves an expenditure equal to or above the public tender threshold, it must be awarded through a public call for tenders only open to those providers.

CHAPTER VIII CONDITIONS TO BE MET PRIOR TO ENTERING INTO CONTRACTS

DIVISION I REQUIRED AUTHORIZATION

58. Where the expected term of a supply contract or a service contract of a repetitive nature in the field of information technologies, including any renewal, is greater than 3 years, the authorization of the chief executive officer of the public body is required.

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

(1) only one tenderer submitted a compliant tender; or

(2) only one tenderer submitted an acceptable tender following a quality evaluation.

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

DIVISION II AFFIRMATIVE ACTION PROGRAM

59. This Division applies only to public bodies referred to in subparagraph 1 or 2 of the first paragraph of section 4 of the Act.

60. Where the amount of a contract in the field of information technologies is \$100,000 or more, or where the amount of a subcontract related to such a contract is \$100,000 or more, the contract or subcontract may not be entered into with a Québec supplier, service provider or subcontractor whose business employs more than 100 persons unless the supplier, service provider or subcontractor has made a commitment to implement an affirmative action program that complies with the Charter of human rights and freedoms (chapter C-12) and holds an attestation to that effect issued by the Chair of the Conseil du trésor.

If such a contract or subcontract is to be entered into with a supplier, service provider or subcontractor of another province or territory of Canada in respect of which an employment equity program is applicable, and that supplier, service provider or subcontractor employs more than 100 persons, the supplier, service provider or

subcontractor must provide an attestation to the effect that the supplier, 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 supplier, service provider or 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 supplier, service provider or subcontractor must provide an attestation to the effect that the supplier, service provider or subcontractor has made a commitment to implement an employment equity program complying with the federal program.

61. The Chair of the Conseil du trésor cancels the attestation issued to a supplier or a service provider referred to in the first paragraph of section 60 who does not fulfil a commitment to implement an affirmative action program.

Any supplier and any service provider whose attestation referred to in section 60 has been cancelled may not enter into a contract with a public body referred to in section 59 or a subcontract related to such a contract as long as a new attestation has not been issued.

DIVISION III QUALITY ASSURANCE, SUSTAINABLE DEVELOPMENT AND ENVIRONMENT

62. A public body may require a quality assurance system, including an ISO standard, or a specification relating to sustainable development and the environment for the carrying out of a contract in the field of information technologies. The public body must specify the requirement in the tender documents.

If such a requirement unduly reduces competition, the public body must allow any supplier or any service provider to submit a tender and grant to the one that fulfils the requirement referred to in the first paragraph a preferential margin not exceeding 10%. In the latter case, the price submitted by such a supplier or such a service provider is, for the sole purpose of determining the successful tenderer, reduced by the preferential margin, without any effect on the price for contract awarding purposes.

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

DIVISION IV ATTESTATION FROM REVENU QUÉBEC

63. Every supplier and service provider interested in entering into a contract in the field of information technologies with a public body involving an expenditure equal to or greater than \$25,000 must hold an attestation from Revenu Québec.

64. The attestation from Revenu Québec is issued to every supplier and service provider who, on the date indicated in the attestation, have filed the returns and reports that they had to file under fiscal laws and who have no overdue account payable to the Minister of Revenue, in particular when their recovery has been legally suspended or arrangements have been made with them to ensure payment and they have not defaulted on the payment arrangement.

65. The attestation of the supplier or the service provider is valid until the end of the 3-month period following the month in which it was issued.

The attestation must not have been issued after the tender closing date and time or, in the case of a contract by mutual agreement, after the contract award date.

The fact that the supplier or service provider holds a valid certificate issued in accordance with the second paragraph is considered to be an eligibility requirement within the meaning of section 6.

66. A supplier or service provider may not submit an attestation from Revenu Québec that contains false or inaccurate information, produce on their own behalf the attestation of a third person, or falsely declare that the supplier or service provider does not hold the required attestation.

67. No person may help another person, by an act or omission, to contravene section 66, or encourage, advise, allow, authorize or order the person to contravene that section.

68. Section 63 does not apply to a supplier or a service provider that does not have in Québec an establishment where activities are carried on on a permanent basis, clearly identified under their name and accessible during regular business hours.

It does not apply either where a contract in the field of information technologies must be entered into by reason of an emergency that threatens human safety or property.

CHAPTER IX INFORMATION TO BE PUBLISHED

DIVISION I CONTRACTS ENTERED INTO FOLLOWING A PUBLIC CALL FOR TENDERS

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

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

(2) the nature of the goods or 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) in the case of a delivery order contract or a task order contract, the estimated amount of the expenditure;

(c) in the case of a delivery order contract or a task order contract involving several suppliers or service providers, the price submitted by each; and

(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.

70. Where a contract was entered into following a competitive dialogue, the public body makes the report of the process auditor accessible on its website within 15 days of the day the contract is entered into.

71. The public body publishes on 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 69 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.

72. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 69, 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 or service provider, the date of the end of the contract and the total amount paid;

(2) in the case of a delivery order contract or a task order contract involving several suppliers or service providers, their respective names 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.

73. If a delivery order contract or a task order contract involving several suppliers or service providers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 69 to 72, 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 FOLLOWING AN INVITATION TO TENDER

74. The public body publishes on the electronic tendering system, within 30 days of entering into a contract in the field of information technologies 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 supplier or service provider or, in the case of a delivery order contract or a task order contract involving several suppliers or service providers, the names of those that were retained;

(3) the nature of the goods or services 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) in the case of a delivery order contract or a task order contract, the estimated amount of the expenditure;

(c) in the case of a delivery order contract or a task order contract involving several suppliers or service providers, the price submitted by each;

(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.

75. The public body publishes on 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 74 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.

76. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 74, 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 public body also publishes, within the same period, 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 supplier or service provider, the date of the end of the contract and the total amount paid;

(2) in the case of a delivery order contract or a task order contract involving several suppliers or service providers, their respective names 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 and 3 to 5 of section 74.

77. If a delivery order contract or a task order contract involving several suppliers or service providers involves a price list whose scope or layout does not make it possible to publish the results in accordance with sections 74 to 76, the public body indicates on the electronic tendering system how to obtain the information related to the results.

78. Despite sections 74 to 77, 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.

CHAPTER X CONTRACT MANAGEMENT CONDITIONS

DIVISION I SETTLEMENT OF DISPUTES

79. The public body and, as the case may be, the supplier or service provider must attempt to amicably settle any difficulty that may arise out of a contract in the field of information technologies by resorting to the dispute resolution clauses in the contract, if any.

If the difficulty cannot be settled in that manner, it may be referred to a court of justice or an adjudicative body, as the case may be, or to an arbitrator. In the latter case, general or special authorization from the Minister of Justice is required for public bodies referred to in subparagraph 1 or 2 of the first paragraph of section 4 of the Act.

DIVISION II PERFORMANCE EVALUATION

80. Where the total amount paid for a contract in the field of information technologies is equal to or greater than \$100,000, a public body must record in a report the evaluation of the supplier or service provider. The public body must do the same where the amount is less than \$100,000 insofar as the performance is considered to be unsatisfactory.

81. The public body must complete its evaluation not later than 60 days after the end of the contract and send a copy of the evaluation to the supplier or service provider.

82. A supplier or a service provider may forward comments in writing on the evaluation report to the public body within 30 days after receiving of the report.

83. Within 30 days after the expiry of the period in section 82 or following receipt of the supplier's or service provider's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the supplier or service provider of the decision. If the chief executive officer fails to act within the prescribed period, the supplier's or service provider's performance is considered to be modified in accordance with the comments received.

In the case of a contract for the acquisition of cloud goods or services entered into under section 49, the chief executive officer of the public body is to send a copy of the evaluation to the Centre de services partagés du Québec.

CHAPTER XI OFFENCES

84. A violation of section 66 or 67 constitutes an offence.

CHAPTER XII TRANSITIONAL AND FINAL

85. Before 1 March 2016, section 65 of this Regulation must be read as follows:

“**65.** The attestation must neither have been issued more than 90 days before the tender closing date and time nor after that date and time or, in the case of a contract by mutual agreement, more than 90 days before the contract award date. The fact that the supplier or service provider holds an attestation is considered to be an eligibility requirement within the meaning of section 6.”.

86. Despite the first paragraph of section 65, a supplier's or service provider's first attestation issued after 31 January 2016 and before 1 February 2017 is valid until the end of the period determined in accordance with section 137 of the Act mainly to implement certain provisions of the Budget Speech of 4 June 2014 and return to a balanced budget in 2015-2016 (2015, chapter 8).

87. The Minister of Revenue is responsible for the administration and enforcement of sections 64, 66, 67 and 84.

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

SCHEDULE 1 (ss. 18, 19, 33 and 56)

QUALITY EVALUATION CONDITIONS FOR A CONTRACT AWARD BASED ON THE LOWEST PRICE

(1) At least 3 criteria are required for quality evaluation.

(2) The public body must specify in the tender documents, for each criterion, the elements of quality required to reach an “acceptable level of performance”, which corresponds to the public body's minimum expectations for the criterion.

(3) An acceptable tender in terms of quality is a tender that, for each criterion, meets the “acceptable level of performance”. A tender that does not reach that level of performance in respect of any criterion is rejected.

SCHEDULE 2 (ss. 16, 18, 19, 21, 23, 33 and 56)

QUALITY EVALUATION CONDITIONS FOR A CONTRACT AWARD BASED ON THE LOWEST ADJUSTED PRICE OR BASED ON THE FINAL SCORE FOR THE HIGHEST QUALITY

(1) The evaluation grid must have at least 3 quality evaluation criteria.

(2) The public body must specify in the tender documents, for each criterion, the elements of quality required to reach an “acceptable level of performance”, which corresponds to the public body's minimum expectations for the criterion.

(3) Each criterion in the evaluation grid is weighted on the basis of its importance for the carrying out of the contract. The total weight of the criteria is 100%.

(4) Each criterion is evaluated on a scale of 0 to 100 points, the “acceptable level of performance” corresponding to 70 points.

(5) At least 70 points may be required in respect of any criterion described in the evaluation grid. A tender that does not reach that minimum is rejected.

(6) The final score for the quality of a tender is the total of the weighted scores obtained in respect of each criterion; the weighted scores are determined by multiplying the score obtained for a criterion by the weight of that criterion.

(7) An acceptable tender in terms of quality is a tender whose final score is at least 70 points.

(8) The price of each acceptable tender is adjusted according to the following formula:

$$\text{Adjusted price} = \left(\frac{\text{Price submitted}}{\text{Quality adjustment factor}} \right)$$

The quality adjustment factor is equal to:

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

where

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

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

Regulation to amend the Regulation respecting supply contracts of public bodies

An Act respecting contracting by public bodies (chapter C-65.1, s. 23, pars. 1, 3 and 6)

1. The Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2) is amended by inserting “certain” after “respecting” in the title.

2. Section 1 is amended by adding “except supply contracts referred to in the Regulation respecting contracting by public bodies in the field of information technologies, made by Order in Council (insert the number and date of the Order in Council)” at the end.

3. Section 4 is amended

(1) by inserting the following after subparagraph 5.1 of the second paragraph:

“(5.2) if applicable, an indication that tenders may be transmitted electronically and that such transmission may only be done through the electronic tendering system;”;

(2) by inserting “offered” after “acquired,” in the third paragraph.

4. Section 5 is amended

(1) by striking out subparagraph 2 of the first paragraph;

(2) by replacing “any calculation to be applied before awarding the contract” in subparagraph 6 of the first paragraph by “any element used as a basis by the public body for the purpose of adjusting the price so as to calculate the total acquisition cost referred to in section 15.1.1, and the calculation to be applied”;

(3) by striking out the second paragraph.

5. Section 7 is amended

(1) by replacing the first paragraph by the following:

“7. Compliance requirements must set out the cases that will entail the automatic rejection of the tender, namely

(1) the closing date and time for receiving tenders have not been complied with and, in the case of a tender sent in paper form, non-compliance with the place designated for its reception;

(2) in the case of a tender sent in paper form, the required signature of an authorized person is missing on the document evidencing the tenderer’s undertaking or the document concerning the tendered price;

(3) the tender is conditional or restrictive;

(4) in the case of a tender transmitted electronically, the fact that the tender was not transmitted through the electronic tendering system or a tender that is unintelligible, infected or otherwise illegible once its integrity has been established;

(5) all the proposed goods do not satisfy the technical specifications required in the tender documents;

(6) if applicable, all the proposed goods fail to pass the compliance tests provided for in the tender documents; and

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

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

“For the purposes of this paragraph, transmitting the same tender by electronic means and on paper form is considered as the filing of several tenders.”.

6. The following is inserted after section 7:

“7.0.1. Compliance requirements must also set out the cases that will entail the rejection of the tender if the tenderer fails to remedy an irregularity indicated by the public body within the period set by the public body or, in the case provided for in subparagraph 4 of this paragraph, within the 2 following business days. Such cases are

(1) the absence of a required document, other than a document whose absence entails the automatic rejection of a tender;

(2) in the case of a tender sent in paper form, the absence of a signature required from an authorized person on a document other than those in respect of which such an absence entails the automatic rejection of a tender;

(3) an erasure or correction to the tendered price that is not initialed;

(4) the fact that the integrity of a tender transmitted electronically could not be established; and

(5) any other case stated in the tender documents.

A tender transmitted electronically within the period set in the first paragraph to remedy the faulty integrity of a tender sent previously is substituted for the previous tender as soon as its integrity is established. That tender is then deemed to have been transmitted before the tender closing date and time.”.

7. Section 9 is amended by adding the following paragraph at the end:

“Provided that it is specified in the tender documents, a public body may reserve the right to not consider a request for details made by a supplier if the request is sent to the public body less than 24 hours before the tender closing date and time.”.

8. The following is inserted after section 9.1:

“9.2. A tender may be transmitted electronically only through the electronic tendering system.”.

9. The following is inserted after section 10:

“10.1. If a tender transmitted electronically, the public body must ensure, at the opening of tenders, the integrity of the tender.”.

10. Section 11 is amended

(1) by replacing “à l’endroit prévu, à la date” in the first paragraph of the French text by “à l’endroit prévu ainsi qu’à la date”;

(2) by replacing the second paragraph by the following:

“At the public opening, the public body discloses the names of the suppliers who submitted a tender in paper form or a tender by electronic means whose integrity has been established. The respective total price of those tenders is also disclosed, subject to subsequent verifications.”;

(3) by adding “and add, if applicable, the information referred to in the second paragraph with regard to the tenders whose integrity has been established since the opening” at the end of the third paragraph.

11. Section 12 is amended by inserting the following after the first paragraph:

“Despite the foregoing, where the tender documents provide for compliance tests, the tests are first carried out in respect of the goods proposed by the tenderer who, in the absence of those tests, would be the successful tenderer. The tests are then carried out in respect of the goods proposed by the next tenderer only if the goods proposed by the preceding tenderer fail to pass the compliance tests and so forth until the tests are successful. However, in the case of a delivery order contract entered into with a number of suppliers, the compliance tests are carried out in respect of the goods proposed by all the selected tenderers.”.

12. Section 13 is amended by striking out the second paragraph.

13. The following is inserted after section 15.1:

“DIVISION IV.0.1
TOTAL ACQUISITION COST

15.1.1. To determine the lowest price or the lowest adjusted price for the purpose of awarding a contract under section 13, 18, 22 or 23, as the case may be, a public body may consider additional costs related to the acquisition of goods. Those additional costs are added to the tendered or adjusted prices, as applicable, in accordance with section 8 of Schedule 2, so as to establish the total acquisition cost for the public body.

Price adjustment made in accordance with the first paragraph must be based on quantifiable and measurable elements identified in the tender documents. Price adjustment must also be carried out after the filing of tenders according to the information contained in each tender.

For the purposes of this Regulation, the additional costs are the costs that would be borne by the public body during the useful life of the goods acquired. They may include, in particular, installation, maintenance, support and training costs that are not included in the tendered price.

15.1.2. Where the public body has considered additional costs in accordance with section 15.1.1 for the purpose of awarding the contract, the public body sends to each tenderer the value of the additional costs concerning the tenderer within 15 days of the contract awarding.”

14. Section 18 is amended

(1) by inserting “, in respect of the goods to be acquired,” after “who” in the first paragraph;

(2) by inserting “for the same goods” at the end of the first paragraph;

(3) by inserting “in respect of the goods to be acquired” after “submitted price” in the second paragraph.

15. The following is inserted after section 18:

“**18.1.** A delivery order contract may allow the selected supplier to replace goods referred to in the contract by new goods provided that the new goods comply with the technical specifications required and provided that their price does not exceed the price of the replaced goods.

Where the delivery order contract is entered into with more than one supplier, each of them may reduce the price of the goods referred to in the contract or replace them in accordance with the first paragraph.

The public body must specify in the tender documents the conditions to be met to make such changes as well as the mechanism to inform the other selected suppliers of the changes made by a competing supplier.

For the purposes of section 18, the price of goods reduced by a supplier under the second paragraph becomes the price submitted by the supplier for the goods concerned.”

16. Section 26 is amended by adding the following paragraph at the end:

“Moreover, on the written request of a tenderer sent within 30 days after the communication made under the first paragraph, the public body must present to the tenderer the results of the tender evaluation for each criterion used to evaluate quality, and briefly set out the reasons justifying the fact that the tender was not accepted. That feedback must be provided, as the case may be, within

30 days after the date of receipt of the tenderer’s request if the request was sent after the awarding of the contract, or within 30 days after the awarding of the contract if the request was sent before that date.”

17. Division IV of Chapter IV, comprising section 29.1, is revoked.

18. Section 32 is amended by adding “open only to the suppliers of certified goods” at the end.

19. Section 39.2 is amended by replacing subparagraph 4 of the third paragraph by the following:

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

20. The heading of Chapter VIII is amended by replacing “CONDITIONS” by “TERMS”.

FINAL

21. Sections 2 to 16 and 18 apply only to calls for tenders that were the subject of a notice published as of (*insert the date of coming into force of this Regulation*) and to contracts entered into by mutual agreement since that date.

22. 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 (chapter C-65.1, s. 23, pars. 1, 3 and 6)

1. The Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4) is amended by inserting “certain” after “respecting” in the title.

2. Section 1 is amended by adding “except those referred to in the Regulation respecting contracting by public bodies in the field of information technologies, made by Order in Council (*insert the number and date of the Order in Council*)” at the end.

3. Section 4 is amended

(1) by inserting the following after subparagraph 5.1 of the second paragraph:

“(5.2) if applicable, an indication that tenders may be transmitted electronically and that such transmission may only be done through the electronic tendering system;”;

(2) by inserting “offered” after “required,” in the third paragraph.

4. Section 5 is amended by striking out subparagraph 2 of the first paragraph, as well as the second paragraph.

5. Section 7 is amended

(1) by replacing the first paragraph by the following:

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

(1) the closing date and time for receiving tenders have not been complied with and, in the case of a tender sent in paper form, non-compliance with the place designated for its reception;

(2) in the case of a tender sent in paper form, the required signature of an authorized person is missing on the document evidencing the tenderer’s undertaking or the document concerning the tendered price;

(3) the tender is conditional or restrictive;

(4) in the case of a tender transmitted electronically, the fact that the tender was not transmitted through the electronic tendering system or a tender that is unintelligible, infected or otherwise illegible once its integrity has been established;

(5) the fact that the price submitted and the quality demonstration are not presented separately as required by section 16, where applicable; and

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

(2) by inserting the following at the end of the second paragraph:

“For the purposes of this paragraph, transmitting the same tender by electronic means and on paper form is considered as the filing of several tenders.”.

6. The following is inserted after section 7:

“**7.0.1.** Compliance requirements must also set out the cases that will entail the rejection of the tender if the tenderer fails to remedy an irregularity indicated by the

public body within the period set by the public body or, in the case provided for in subparagraph 4 of this paragraph, within the 2 following business days. Such cases are

(1) the absence of a required document, other than a document whose absence entails the automatic rejection of a tender;

(2) in the case of a tender sent in paper form, the absence of a signature required from an authorized person on a document other than those in respect of which such an absence entails the automatic rejection of a tender;

(3) an erasure or correction to the tendered price that is not initialed;

(4) the fact that the integrity of a tender transmitted electronically could not be established; and

(5) any other case stated in the tender documents.

A tender transmitted electronically within the period set in the first paragraph to remedy the faulty integrity of a tender sent previously is substituted for the previous tender as soon as its integrity is established. That tender is then deemed to have been transmitted before the tender closing date and time.”.

7. Section 9 is amended by adding the following paragraph at the end:

“Provided that it is specified in the tender documents, the public body may reserve the right to not consider a request for details made by a service provider if the request is sent to the public body less than 24 hours before the tender closing date and time.”.

8. The following is inserted after section 9.1:

“**9.2.** A tender may be transmitted electronically only through the electronic tendering system.”.

9. The following is inserted after section 10:

“**10.1.** If a tender transmitted electronically, the public body must ensure, at the opening of tenders, the integrity of the tender.”.

10. Section 11 is amended

(1) by replacing “à l’endroit prévu, à la date” in the first paragraph of the French text by “à l’endroit prévu ainsi qu’à la date”;

(2) by replacing the second paragraph by the following:

“At the public opening, the public body discloses the names of the service providers who submitted a tender in paper form or a tender by electronic means whose integrity has been established. The respective total price of those tenders is also disclosed, subject to subsequent verifications.”;

(3) by adding “and add, if applicable, the information referred to in the second paragraph with regard to the tenders whose integrity has been established since the opening” at the end of the third paragraph.

11. Section 17 is amended

(1) by replacing the first paragraph by the following:

“17. The provisions of section 10.1 and those of the first paragraph of section 11 apply to a professional service contract.

At the public opening of tenders, only the names of the service providers who submitted a tender in paper form or a tender by electronic means whose integrity has been established are disclosed and the results of the opening are made available in accordance with the third paragraph of section 11.”;

(2) by replacing “first” in the second paragraph by “second”.

12. Section 25 is amended

(1) by adding “and applies the provisions of section 10.1” at the end of the third paragraph;

(2) by adding “and adds, if applicable, the names of the tenderers of the tenders whose integrity has been established since the opening of the tenders filed during the first stage” at the end of the seventh paragraph.

13. Section 28 is amended by adding the following paragraph at the end:

“Moreover, on the written request of a tenderer sent within 30 days after the communication made under the first paragraph, the public body must present to the tenderer the results of the tender evaluation for each criterion used to evaluate the quality, and briefly set out the reasons justifying the fact that the tender was not accepted. That feedback must be provided, as the case may be, within 30 days after the date of receipt of the tenderer’s request if the request was sent after the awarding of the contract, or within 30 days after the awarding of the contract if the request was sent before that date.”.

14. Section 31 is replaced by the following:

“31. The public body must indicate in the tender documents the extent of the services that the public body intends to request or, failing that, the approximate monetary value of the contract.”.

15. Section 52.2 is amended by replacing subparagraph 4 of the second paragraph by the following:

“(4) in the case of a contract referred to in the second paragraph, the other information provided for in paragraphs 1 and 3 to 5 of section 52.”.

16. The heading of Chapter VIII is amended by replacing “CONDITIONS” by “TERMS”.

FINAL

17. Sections 2 to 14 apply only to calls for tenders that were the subject of a notice published as of (*insert the date of coming into force of this Regulation*) and to contracts entered into by mutual agreement since that date.

18. 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 (chapter C-65.1, s. 23, pars. 1, 3 and 6)

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 5.1 of the second paragraph:

“(5.2) if applicable, an indication that tenders may be transmitted electronically and that such transmission may only be done through the electronic tendering system.”;

(2) by inserting “offered” after “required,” in the third paragraph.

2. Section 5 is amended by striking out subparagraph 2 of the first paragraph, as well as the second paragraph.

3. Section 7 is amended

(1) by replacing the first paragraph by the following:

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

(1) the closing date and time for receiving tenders have not been complied with and, in the case of a tender sent in paper form, non-compliance with the place designated for its reception;

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

(3) in the case of a tender sent in paper form, the required signature of an authorized person is missing on the document evidencing the tenderer's undertaking or the document concerning the tendered price;

(4) the tender is conditional or restrictive;

(5) in the case of a tender transmitted electronically, the fact that the tender was not transmitted through the electronic tendering system or a tender that is unintelligible, infected or otherwise illegible once its integrity has been established; and

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

(2) by inserting the following at the end of the second paragraph:

“For the purposes of this paragraph, transmitting the same tender by electronic means and on paper form is considered as the filing of several tenders.”.

4. The following is inserted after section 7:

“**7.0.1.** Compliance requirements must also set out the cases that will entail the rejection of the tender if the tenderer fails to remedy an irregularity indicated by the public body within the period set by the public body or, in the case provided for in subparagraph 4 of this paragraph, within the 2 following business days. Such cases are

(1) the absence of a required document, other than a document whose absence entails the automatic rejection of a tender;

(2) in the case of a tender sent in paper form, the absence of a signature required from an authorized person on a document other than those in respect of which such an absence entails the automatic rejection of a tender;

(3) an erasure or correction to the tendered price that is not initialed;

(4) the fact that the integrity of a tender transmitted by electronic means could not be established; and

(5) any other case stated in the tender documents.

A tender transmitted electronically within the period set in the first paragraph to remedy the faulty integrity of a tender sent previously is substituted for the previous tender as soon as its integrity is established. That tender is then deemed to have been transmitted before the tender closing date and time.”.

5. Section 9 is amended by adding the following paragraph at the end:

“Provided that it is specified in the tender documents, the public body may reserve the right to not consider a request for details made by a contractor if the request is sent to the public body less than 24 hours before the tender closing date and time.”.

6. The following is inserted after section 9.1:

“**9.2.** A tender may be transmitted electronically only through the electronic tendering system.”.

7. The following is inserted after section 13:

“**13.1.** If a tender transmitted electronically, the public body must ensure, at the opening of tenders, the integrity of the tender.”.

8. Section 14 is amended

(1) by replacing “à l’endroit prévu, à la date” in the first paragraph of the French text by “à l’endroit prévu ainsi qu’à la date”;

(2) by replacing the second paragraph by the following:

“At the public opening, the public body discloses the names of the contractors who submitted a tender in paper form or a tender by electronic means whose integrity has been established. The respective total price of those tenders is also disclosed, subject to subsequent verifications.”;

(3) by adding “and add, if applicable, the information referred to in the second paragraph with regard to the tenders whose integrity has been established since the opening” at the end of the third paragraph.

9. Section 22 is amended

(1) by adding “and applies the provisions of section 13.1” at the end of the fourth paragraph;

(2) by adding “and adds, if applicable, the names of the tenderers of the tenders whose integrity has been established since the opening of the tenders filed during the first stage” at the end of the seventh paragraph.

10. Section 26 is amended

(1) by adding “and applies the provisions of section 13.1” at the end of the third paragraph;

(2) by adding “and adds, if applicable, the names of the tenderers of the tenders whose integrity has been established since the opening of the tenders filed during the first stage” at the end of the seventh paragraph.

11. Section 32 is amended by adding the following paragraph at the end:

“Moreover, on the written request of a tenderer sent within 30 days after the communication made under the first paragraph, the public body must present to the tenderer the results of the tender evaluation for each criterion used to evaluate the quality, and briefly set out the reasons justifying the fact that the tender was not accepted. That feedback must be provided, as the case may be, within 30 days after the date of receipt of the tenderer’s request if the request was sent after the awarding of the contract, or within 30 days after the awarding of the contract if the request was sent before that date.”

12. Section 42.2 is amended by replacing subparagraph 4 of the third paragraph by the following:

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

13. The heading of Chapter VII is amended by replacing “CONDITIONS” by “TERMS”.

FINAL

14. Sections 1 to 11 apply only to calls for tenders that were the subject of a notice published as of (*insert the date of coming into force of this Regulation*) and to contracts entered into by mutual agreement since that date.

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

102343

Draft Regulation

An Act respecting end-of-life care
(chapter S-32.0001)

Conditions for accessing and operating the advance medical directives register

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the conditions for accessing and operating the advance medical directives register, appearing below, may be made by the Minister on the expiry of 45 days following this publication.

Pursuant to section 64 of the Act respecting end-of-life care (chapter S-32.0001), the draft Regulation prescribes how the register is to be accessed and operated. It also prescribes who may record advance medical directives in the register and who may consult it.

Further information may be obtained by contacting Régina Lavoie, project manager for palliative care and end-of-life care, Direction générale des services de santé et médecine universitaire, Ministère de la Santé et des Services sociaux, 1075, chemin Sainte-Foy, Québec (Québec) G1S 2M1; telephone: 418 266-5974; fax: 418 266-8974; email: regina.lavoie@msss.gouv.qc.ca

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to the Minister of Health and Social Services, 1075, chemin Sainte-Foy, 15^e étage, Québec (Québec) G1S 2M1.

GAÉTAN BARRETTE,
*Minister of Health and
Social Services*

Regulation respecting the conditions for accessing and operating the advance medical directives register

An Act respecting end-of-life care
(chapter S-32.0001, s. 64)

CHAPTER I GENERAL

1. This Regulation sets out the conditions for accessing and operating the advance medical directives register established by the Minister pursuant to section 63 of the Act.