

Regulations and other Acts

Gouvernement du Québec

O.C. 292-2016, 13 April 2016

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 6 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, under section 24 of the Act, the conditions for contracts and the cases in which contracts are subject to authorization under the first paragraph of section 23 of the Act may vary in respect of all contracts, certain categories of contracts or certain contracts entered into by a public body or by a category of public bodies designated by regulation;

WHEREAS the Government made the Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2), which contains, in particular, provisions regarding the soliciting of tenders through a public call for tenders to award a supply contract of a public body;

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 Regulation to amend the Regulation respecting supply contracts of public bodies was published in Part 2 of the *Gazette officielle du Québec* of 11 November 2015 with a notice that it could be made by the Government on the expiry of 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 the Regulation 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 Ongoing Program Review and Chair of the Conseil du trésor:

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

JUAN ROBERTO IGLESIAS,
Clerk of the Conseil exécutif

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, and s. 24)

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 inserting “except supply contracts referred to in the Regulation respecting contracting by public bodies in the field of information technologies, made by Order in Council 295-2016 dated 13 April 2016” 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) the absence of the document evidencing the tenderer’s undertaking or of the document related to the tendered price or, in the case of a tender sent in paper form, the required signature of an authorized person is missing on any of those documents;

(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 by the electronic tendering system;

(5) if the call for tenders includes the acquisition of goods subject to technical specifications or compliance tests, non-compliance with the requirements imposed in that respect; 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 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 indicate that, in the case of a tender transmitted electronically whose integrity has not been ascertained, failure to remedy that irregularity within 2 business days following the default notice sent by the public body entails rejection of the tender.

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 ascertained by the public body. 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 2 business days 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 is transmitted electronically, the public body must, at the opening of tenders, ascertain the integrity of the tender through the electronic tendering system.”.

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 and third paragraphs by the following:

“At the public opening, the public body discloses the names of all the suppliers, including the name of any supplier who transmitted electronically a tender whose integrity has not been ascertained, although such information is subject to verification.

The public body also discloses, subject to the same verification, the respective total price of the tenders. Despite the foregoing, if the integrity of at least one tender transmitted electronically could not be ascertained at the opening, such disclosure takes place instead at the time of the publication provided for in the fourth paragraph.

The public body publishes, within 4 business days, the result of the public opening in the electronic tendering system.”.

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 supplier 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 supplier only if the goods proposed by the preceding supplier 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 suppliers who, except for those tests, would be retained.”

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

13. Section 15 is amended by inserting “at the end of the tendering process,” before “only 1 supplier” in subparagraph 1 of the second paragraph.

14. 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, 23 or 26.1, 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 not included in the tendered price that would be borne by the public body during the useful life of the goods acquired. They may include installation, maintenance, support and training costs, as well as the costs of any other item deemed relevant by the public body in connection with the goods acquired.

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.”

15. Section 18 is amended

(1) by inserting “, in respect of the goods to be acquired,” after “the supplier 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.

16. 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.”

17. Section 20 is replaced by the following:

“20. At the public opening of tenders as provided for in section 11, only the name of the suppliers, including the name of any supplier who transmitted electronically a tender whose integrity has not been ascertained, is then disclosed and the result of the opening is published in accordance with the fourth paragraph of that section.”

18. 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 within 30 days after the date of receipt of the tenderer’s request.”

19. The following is added after Division II of Chapter III:

**“DIVISION III
CONTRACT AWARDED FOLLOWING A CALL
FOR TENDERS INVOLVING 2 STAGES**

26.1. Despite section 10, a public body may also use a call for tenders in 2 stages to award a supply contract. The second and third paragraphs of section 19 and sections 24 and 25 apply to such call for tenders.

The public body firsts selects suppliers by soliciting solely 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 suppliers who will be invited to participate in the second stage.

The public body then invites the selected suppliers to submit a tender involving either only a price, or a quality demonstration and a price. In the first case, the public body awards the contract to the supplier who submitted the lower price; in the latter case, the public body applies the quality evaluation conditions in Schedule 2 and awards the contract to the supplier who submitted the lowest adjusted price.

26.2. Despite section 11, tenders submitted during 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 closing date and time fixed in the tender documents. The public body publishes in the electronic tendering system the names of the suppliers who participated in that stage within 4 business days following the public opening of the tenders filed at the second stage.

At the second stage, where the selected suppliers are invited to submit a tender including a quality demonstration and a price, the provisions of section 20 apply.

26.3. The public body informs each tenderer of the result of the quality evaluation of the tender for each of the stages including such evaluation in which the tenderer took part. Such communication takes place at the time of sending to the tenderers retained after the first stage an invitation to participate in the second stage or within 15 days of the contract awarding, as the case may be.

If Schedule 1 applies, the particulars sent to tenderers are

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

(2) the names of the tenderers qualified for the second stage.

If Schedule 2 applies, the particulars sent to tenderers are

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

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

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

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.”.

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

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

22. 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.”.

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

24. The following is inserted after section 46.1:

“**46.2.** Section 9.2 does not apply to tenders transmitted electronically under a call for tenders for the conclusion of a supply contract by a legal person or by a joint procurement group referred to in section 383 of the Act respecting health services and social services (chapter S-4.2) where the documents related to the tendered price are in the form of a price list whose scope or layout does not make it possible to identify a total price.

Subparagraph 5.2 of the second paragraph of section 4, subparagraph 4 of the first paragraph of section 7 and section 10.1 apply to tenders referred to in the first paragraph, adapted as required.”

TRANSITIONAL AND FINAL

25. Despite the second paragraph of section 7 of the Regulation respecting certain supply contracts of public bodies (chapter C-65.1, r. 2), as amended by paragraph 2 of section 5 of this Regulation, the transmission, until 31 May 2019, of a same tender electronically and in paper form does not amount to filing more than one tender.

26. Until 31 May 2019, when a supplier transmits, under a call for tenders, a same tender electronically and in paper form, the tender transmitted in paper form must be considered by the public body only if the public body cannot ascertain the integrity of the tender transmitted electronically at the opening of tenders, being understood that section 7.0.1 of the Regulation respecting certain supply contracts of public bodies, made by section 6 of this Regulation, does not apply in such case.

27. Until 31 May 2019, the second sentence of the third paragraph of section 11 of the Regulation respecting certain supply contracts of public bodies, as amended by paragraph 2 of section 10 of this Regulation, applies only when a tender whose integrity could not be ascertained was not also transmitted in paper form.

28. The provisions of sections 2 to 19, 21 and 24 to 27 apply only to calls for tenders for which a notice is published as of 1 June 2016.

29. This Regulation comes into force on 1 June 2016.

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Gouvernement du Québec

O.C. 293-2016, 13 April 2016

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

Service contracts of public bodies

—Amendment

Regulation to amend the Regulation respecting service contracts of public bodies

WHEREAS, under paragraphs 1, 3 and 6 of section 23 of the Act respecting contracting by public bodies (chapter C-65.1), the Government may make regulations on the matters set forth therein with respect to service contracts of public bodies;

WHEREAS the Government made the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4), which contains, in particular, provisions regarding the soliciting of tenders through a public call for tenders to award a service contract of a public body;

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 Regulation to amend the Regulation respecting service contracts of public bodies was published in Part 2 of the *Gazette officielle du Québec* of 11 November 2015 with a notice that it could be made by the Government on the expiry of 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 the Regulation 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 Ongoing Program Review and Chair of the Conseil du trésor:

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

JUAN ROBERTO IGLESIAS,
Clerk of the Conseil exécutif

Regulation to amend the Regulation respecting service contracts of public bodies

An Act respecting contracting by public bodies (chapter C-65.1, s. 23, pars. 1, 3 and 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 inserting “except those referred to in the Regulation respecting contracting by public bodies in the field of information technologies, made by Order in Council 295-2016 dated 13 April 2016” at the end.