

(3) by inserting “as the case may be, the names of the tenderers qualified for the second stage or” before “the name” in subparagraph 3 of the third paragraph;

(4) 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”.

TRANSITIONAL AND FINAL

14. Despite the second paragraph of section 7 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5), as amended by paragraph 2 of section 3 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.

15. Until 31 May 2019, when a contractor 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 construction contracts of public bodies, made by section 4 of this Regulation, does not apply in such case.

16. Until 31 May 2019, the second sentence of the third paragraph of section 14 of the Regulation respecting construction contracts of public bodies, as amended by paragraph 2 of section 8 of this Regulation, applies only when a tender whose integrity could not be ascertained was not also transmitted in paper form.

17. The provisions of sections 1 to 11 and 14 to 16 apply only to calls for tenders for which a notice is published as of 1 June 2016.

18. This Regulation comes into force on 1 June 2016.
102567

Gouvernement du Québec

O.C. 295-2016, 13 April 2016

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

Contracting by public bodies in the field of information technologies

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

WHEREAS, under paragraphs 1, 3, 5 to 7, 14 and 15 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 contracts of public bodies;

WHEREAS section 24.2 of the Act provides that the Minister of Revenue is responsible for the administration and carrying out of the regulatory provisions made under paragraphs 14 and 15 of section 23 of the Act if so provided in the regulation;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation respecting contracting by public bodies in the field of information technologies 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 respecting contracting by public bodies in the field of information technologies, attached to this Order in Council, be made.

JUAN ROBERTO IGLESIAS,
Clerk of the Conseil exécutif

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 intended 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 preponderantly 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 11 and the composition of the selection committee provided for in the second paragraph of section 27 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 15, the calculation to be applied before awarding the contract and the conditions governing the competitive dialogue; and

(8) 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) 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) the fact that the price submitted and the quality demonstration are not presented separately as required by the second paragraph of section 14;

(6) 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; or

(7) 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 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

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.

§4. Amendment to and obtention of tender documents

11. 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 2 business days before the tender closing date and time.

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

§5. Electronic transmission of tender

13. 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

14. 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 27.

15. To determine the lowest price or the lowest adjusted price for the purposes of awarding, under section 16, 17, 18, 22 or 43, a contract including 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 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, configuration, licence, progress, interoperability, training and data migration costs, as well as the costs of any other item deemed relevant by the public body in connection with the goods acquired.

§2. Contract awarded to the lowest price

16. 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*

17. 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. *Contract awarded following a call for tenders involving 2 stages*

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

The public body first selects suppliers or 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 tenderers 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. *Contract awarded following a call for tenders involving a competitive dialogue*

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

20. The public body first invites suppliers or 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. If only 1 tenderer meets the selection criteria, the public body must cancel the call for tenders.

21. 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 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.

22. After having had a dialogue with each of the selected tenderers, 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 tenderer who submitted the lowest adjusted price.

DIVISION II TENDER PROCESSING

23. 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.

24. When awarding a contract in accordance with section 16 or 17, 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 all the tenderers, including the name of any tenderer who electronically transmitted a tender whose integrity has not been ascertained, although such information is subject to verification.

Moreover, where the call for tenders concerns the awarding of a contract without quality evaluation, 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.

25. Where a public body issues a call for tenders involving more than one stage under section 18 or section 19, 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.

In the case of a call for tenders involving 2 stages, the provisions of section 24 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. At the opening, the public body discloses the names of all the tenderers, including the name of any tenderer who electronically transmitted a tender whose integrity has not been established. The public body publishes, within 4 business days, the result of the public opening of tenders in the electronic tendering system.

26. 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 tenderers who, in the absence of those tests, would be retained.

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.

27. 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.

28. 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) at the end of the tendering process, 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.

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

30. 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.

31. Where, for the purpose of awarding the contract, the public body has considered additional costs in accordance with section 15, 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.

32. 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 18 and 20, 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 and, if applicable, 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

33. The price of a tender is unusually low if an extensive and documented analysis by the committee referred to in section 35 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.

34. 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.

35. If the tenderer fails to submit explanations within the period set in section 34 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.

36. 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.

37. 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.

38. The tenderer may, within 10 days of receiving the report referred to in section 37, send written comments to the contract rules compliance monitor of the public body.

39. 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.

40. 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

41. 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.

42. 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.

43. 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.

44. 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 43, 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

45. 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.

46. 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.

47. 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

48. 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, following an interest call issued by the Centre de services partagés du Québec, has concluded a framework agreement with the Centre under Order in Council 923-2015 dated 28 October 2015, as amended, 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 retained by the public body is the one who offers the most advantageous goods or services.

To determine the most advantageous goods or services, 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

49. 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

50. 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

51. 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.

52. 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.

53. 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

54. 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.

55. 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 27 and applies the evaluation conditions in Schedule 1 or in sections 1 to 7 of Schedule 2.

56. 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

57. 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

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

59. 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.

60. 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 59 who does not fulfil a commitment to implement an affirmative action program.

Any supplier and any service provider whose attestation referred to in section 59 has been cancelled may not enter into a contract with a public body referred to in section 58 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

61. 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 **CERTIFICATE FROM REVENU QUÉBEC**

62. 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 a certificate from Revenu Québec.

63. The certificate from Revenu Québec is issued to every supplier and service provider who, on the date indicated in the certificate, 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.

64. The certificate 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 certificate 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.

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

66. No person may help another person, by an act or omission, to contravene section 65, or encourage, advise, allow, authorize or order the person to contravene that section.

67. Section 62 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**

68. 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.

69. Where a contract was entered into following a competitive dialogue, the public body publishes the report of the process auditor in the electronic tendering system within 15 days of the day the contract is entered into.

70. 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 68 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.

71. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 68, 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.

72. 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 68 to 71, 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

73. 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.

74. 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 73 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.

75. The public body also publishes on the electronic tendering system, within 90 days of the end of a contract referred to in section 73, 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 73.

76. 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 73 to 75, the public body indicates on the electronic tendering system how to obtain the information related to the results.

77. Despite sections 73 to 76, 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

78. 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

79. 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.

80. 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 report to the supplier or service provider.

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

82. Within 30 days following receipt of the supplier's or service provider's comments, 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 performance evaluation is considered to be modified in accordance with the comments received.

Likewise, where, following an unsatisfactory performance evaluation, the supplier or service provider has made no comments within the period prescribed in section 81, the chief executive officer of the public body must, within 30 days following the expiry of that period, uphold or not the evaluation and so inform the supplier or service provider. If the chief executive officer fails to act within the prescribed period, the performance is considered satisfactory.

Moreover, in the case of a contract for the acquisition of cloud goods or services entered into under section 48, the chief executive officer of the public body is to send to the Centre de services partagés du Québec the supplier's or service provider's evaluation, adjusted, if applicable, in accordance with this section.

CHAPTER XI OFFENCES

83. A violation of section 65 or 66 constitutes an offence.

CHAPTER XII TRANSITIONAL AND FINAL

84. Despite the second paragraph of section 8, the transmission, until 31 May 2019, of a same tender electronically and in paper form does not amount to filing more than one tender.

85. Until 31 May 2019, when a tenderer 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 the provisions of section 9 do not apply in such a case.

86. Until 31 May 2019, the second sentence of the third paragraph of section 24 applies only if the tender whose integrity could not be ascertained was not also transmitted in paper form.

87. Despite the first paragraph of section 64, 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).

88. The Minister of Revenue is responsible for the administration and enforcement of sections 63, 65, 66 and 83.

89. This Regulation comes into force on 1 June 2016, except section 48, which comes into force on 12 May 2016.

SCHEDULE 1 (ss. 17, 18, 32 and 55)

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. 15, 17, 18, 20, 22, 32 and 55)

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:

$$\text{Adjusted price} = \frac{\text{Price submitted}}{\text{Quality adjustment factor}}$$

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% or, in the case of a call for tenders involving a competitive dialogue, 40%.

102568

Gouvernement du Québec

O.C. 302-2016, 13 April 2016

Securities Act
(chapter V-1.1)

System fees for SEDAR and NRD — Regulation 13-102 — Amendment

Regulation to amend the Regulation 13-102 respecting system fees for SEDAR and NRD

WHEREAS subparagraph 9 of the first paragraph of section 331 of the Securities Act (chapter V-1.1) provides that the Autorité des marchés financiers may, by regulation, prescribe the fees payable for any formality provided for in the Act or the regulations and for services rendered by the Authority, and the terms and conditions of payment;

WHEREAS the second paragraph of section 331 of the Act provides that a regulation made under that section is to be submitted to the Government for approval, with or without amendment;

WHEREAS the Government approved the Regulation 13-102 respecting system fees for SEDAR and NRD by Order in Council 955-2013 dated 18 September 2013;

WHEREAS it is expedient to amend the Regulation;

WHEREAS the Autorité des marchés financiers made the Regulation to amend the Regulation 13-102 respecting system fees for SEDAR and NRD on 20 October 2015;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft of the Regulation to amend the Regulation 13-102 respecting system fees for SEDAR and NRD was published in Part 2 of the *Gazette officielle du Québec* of 16 December 2015 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS the 45-day period has expired;

WHEREAS it is expedient to approve the Regulation without amendment;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the Regulation to amend the Regulation 13-102 respecting system fees for SEDAR and NRD, attached to this Order in Council, be approved.

JUAN ROBERTO IGLESIAS,
Clerk of the Conseil exécutif

Regulation to amend Regulation 13-102 respecting System fees for SEDAR and NRD

Securities Act
(chapter V-1.1, s. 331, par. (9))

1. Regulation 13-102 respecting System fees for SEDAR and NRD (chapter V-1.1, r. 2.1) is amended by inserting, after section 4, the following:

“System fees for filings that do not require a principal regulator

4.1. (1) A person making a filing of the type described in Column B of Appendix C, and of the category referred to in Column A of that Appendix, must pay the system fee specified in Column C of that Appendix. The system fee is payable to, and allocated among, the securities regulatory authorities with whom the filing is required under Regulation 13-101 respecting System for Electronic Document Analysis and Retrieval (SEDAR) (chapter V-1.1, r. 2).

2. Section 8 of the Regulation is amended by inserting, after “4,” “4.1.”