

Treasury Board

Gouvernement du Québec

T.B. 229041, 12 September 2023

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

Definition of certain expressions for the purposes of Division IV of Chapter II of the Act respecting contracting by public bodies

Regulation respecting the definition of certain expressions for the purposes of Division IV of Chapter II of the Act respecting contracting by public bodies

WHEREAS, under section 14.5 of the Act respecting contracting by public bodies (chapter C-65.1), the Conseil du trésor defines, by regulation, the expressions “small enterprises in Québec and elsewhere in Canada”, “Québec or otherwise Canadian value added” and “Québec or otherwise Canadian goods, services or construction work” for the purposes of sections 14.1 and 14.4 of the Act, and the expression “Québec goods, services or construction work” for the purposes of sections 14.2 and 14.3 of the Act;

WHEREAS, under the second paragraph of section 14.1 of the Act, the Conseil du trésor determines, by regulation, the form and maximum percentage of the preference a public body may grant based on the Québec or otherwise Canadian value added;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), a draft Regulation respecting the definition of certain expressions for the purposes of Division IV of Chapter II of the Act respecting contracting by public bodies was published in Part 2 of the *Gazette officielle du Québec* of 1 March 2023 with a notice that it could be made by the Conseil du trésor on the expiry of 45 days following that publication;

WHEREAS it is expedient to make the Regulation without amendment;

THE CONSEIL DU TRÉSOR DECIDES:

THAT the Regulation respecting the definition of certain expressions for the purposes of Division IV of Chapter II of the Act respecting contracting by public bodies, attached hereto, be made.

Le greffier du Conseil du trésor,
LOUIS TREMBLAY

Regulation respecting the definition of certain expressions for the purposes of Division IV of Chapter II of the Act respecting contracting by public bodies

Act respecting contracting by public bodies
(chapter C-65.1, s. 14.1, 2nd par., and s. 14.5)

1. The expression “small enterprises in Québec and elsewhere in Canada” means enterprises that have an establishment in Québec or elsewhere in Canada with less than 50 employees, including employees of any related enterprise.

Two enterprises are related where one has direct or indirect legal control of the other or where a third enterprise has direct or indirect legal control of the other two.

The number of employees of a small enterprise in Québec or elsewhere in Canada or a related enterprise is determined by calculating,

(1) in the case of an enterprise that has been in operation for 12 months or more on the date on which the tender is submitted, the average of the number of employees registered in the enterprise register per pay period in the 12 months preceding the date on which the tender is submitted; and

(2) in the case of an enterprise that has been in operation for less than 12 months on the date on which the tender is submitted, the average of the number of employees registered in the enterprise register per pay period between the date from which the enterprise has been in operation and the date on which the tender is submitted.

2. The expression “Québec or otherwise Canadian value added” means

(1) in the case of goods, the proposal

(a) of goods in the natural state obtained entirely in Québec or elsewhere in Canada;

(b) of goods entirely produced in Québec or elsewhere in Canada from goods referred to in subparagraph a only; or

(c) of goods whose last substantial transformation was carried out in Québec or elsewhere in Canada; and

(2) in the case of services or construction work, the portion of the tendered price for the services or construction work corresponding to those for which an enterprise assigns for the carrying out of the work natural persons residing in Québec or elsewhere in Canada.

For the purposes of this Regulation, “substantial transformation” means a fundamental change to goods in terms of function, character or nature that gives them their essential characteristics.

3. The preference a public body may grant based on the Québec or otherwise Canadian value added must be in the form of a preferential margin applicable on the tendered price for goods, services or construction work, for the sole purpose of determining the successful tenderer for the contract.

The preference must not have a value greater than 10%.

4. The expression “Québec or otherwise Canadian goods, services or construction work” means,

(1) in the case of goods,

(a) goods in the natural state obtained entirely in Québec or elsewhere in Canada;

(b) goods entirely produced in Québec or elsewhere in Canada from goods referred to in subparagraph *a* only; or

(c) goods whose last substantial transformation was performed in Québec or elsewhere in Canada; and

(2) in the case of services or construction work, the services or construction work for which an enterprise assigns for the carrying out of the work natural persons residing in Québec or elsewhere in Canada in a proportion equal to 70% or more of the tendered price for the services or construction work.

For the purposes of subparagraph 2 of the first paragraph, “tendered price” is replaced by “amount of the fees” where a public body solicits only a quality demonstration via a call for tenders.

5. The expression “Québec goods, services or construction work” means,

(1) in the case of goods,

(a) goods in the natural state obtained entirely in Québec;

(b) goods entirely produced in Québec from goods referred to in subparagraph *a* only; or

(c) goods whose last substantial transformation was performed in Québec; and

(2) in the case of services or construction work, the services or construction work for which an enterprise assigns for the carrying out of the work natural persons residing in Québec in a proportion equal to 70% or more of the tendered price for the services or construction work.

For the purposes of subparagraph 2 of the first paragraph, “tendered price” is replaced by “amount of the fees” where a public body solicits only a quality demonstration via a call for tenders and by “agreed price” in the case of a contract by mutual agreement.

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

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