

Further information on the draft Regulation may be obtained by contacting Robert Villeneuve, Director General, Direction générale de l'encadrement, Sous-secrétariat aux marchés publics, Secrétariat du Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8, telephone: 418 643-0875, extension 4938; email: robert.villeneuve@sct.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 Responsible for Government Administration and Chair of the Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8; email: robert.villeneuve@sct.gouv.qc.ca.

SONIA LEBEL

*Minister Responsible for Government Administration  
and Chair of the Conseil du trésor*

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## Regulation to revoke the Architects' Fees (Services to Government) Regulation

Act respecting contracting by public bodies  
(chapter C-65.1, s. 23, par. 1)

**1.** The Architects' Fees (Services to Government) Regulation (*chapter C-65.1, r. 9*) is revoked.

The Regulation continues to apply to contract award procedures begun before the date of coming into force of this section.

The same applies to contracts resulting from those procedures that are in progress on that date. As of (*insert the date that is four years and 15 days after the date of publication of this Regulation in the Gazette officielle du Québec*), for the remaining duration of such contracts, the parties may agree on terms that are different than those provided for in the Regulation.

**2.** Until the coming into force of Section 1, Schedule II of the Architects' Fees (Services to Government) Regulation must be read

(1) by replacing "FROM 6 APRIL 2023 to 5 JANUARY 2024" by "AS OF 6 APRIL 2023";

(2) by striking out the column "AS OF 6 JANUARY 2024".

**3.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except section 1 which comes into force on (*insert the date that is one year and 15 days after the date of publication of this Regulation in the Gazette officielle du Québec*).

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## Draft Regulation

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

### Certain service contracts of public bodies — Amendment

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation to amend the Regulation respecting certain service contracts of public bodies, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation reviews the methods for awarding architecture or engineering professional service contracts relating to construction work on a building or transport infrastructure.

The draft Regulation has no impact on the public or on enterprises, including small and medium-sized businesses.

Further information on the draft Regulation may be obtained by contacting Robert Villeneuve, Director General, Direction générale de l'encadrement, Sous-secrétariat aux marchés publics, Secrétariat du Conseil du trésor, 875, Grande Allée Est, Québec (Québec) G1R 5R8, telephone: 418 643-0875, extension 4938; email: robert.villeneuve@sct.gouv.qc.ca.

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## Regulation to amend the Regulation respecting certain service contracts of public bodies

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

**1.** The Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4) is amended by inserting the following subdivision after the heading of Division IV of Chapter II:

*“§1. Exceptions relating to scope*

**15.2.** Architecture and engineering service contracts relating to construction work on a building or transport infrastructure referred to in Division IV.1 of chapter IV are governed by this Division only to the extent provided for in Division IV.1.”

**2.** Subdivision 1 of Division IV of Chapter II is renumbered 2.

**3.** Subdivision 2 of Division IV of Chapter II is renumbered 3.

**4.** Section 24 is revoked.

**5.** Section 25 is amended by replacing “24” in the ninth paragraph by “23”.

**6.** Section 28 is amended by replacing subparagraph 2 of the third paragraph by the following:

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

**7.** The following sections are added after section 32:

**“32.1.** Despite section 30, only the Ministère des Transports and the Société québécoise des infrastructures may enter into a task order contract for architecture or engineering services relating to construction work on a building or transport infrastructure. The Ministère and the Société may only request a quality demonstration, which is evaluated in accordance with the conditions in sections 1 to 7 of Schedule 2.

The tender documents must indicate, in addition to the information provided for in section 31, the criteria for distributing performance requests among service providers, as well as the compensation rates applicable.

Despite section 32, performance requests are made to the service providers retained in a fair manner that takes into account the objectives set out in subparagraphs 2 and 6 of the first paragraph of section 2 of the Act.

**32.2.** Where the Ministère des Transports or the Société québécoise des infrastructures enters into a contract under section 32.1, it must, once a year, publish a notice on the electronic tendering system in order to enable the selection of one or more additional service providers for the purpose of carrying out the performance requests resulting from the contract.

The notice must indicate, along with the estimated amount of the expenditure for the remaining period of the contract, the information provided for in the second paragraph of section 4, with the necessary modifications. The third paragraph of section 4 applies. In addition, the tender documents are adapted and used again for selecting one or more additional service providers.”

**8.** Section 34 is amended

(1) by striking out “, except in the cases provided for in section 24,”;

(2) by inserting “, except a contract referred to in section IV.1 of Chapter IV” after “contract”.

**9.** Division IV of Chapter IV, including section 40, is revoked.

**10.** The following Division is added after section 40:

**“DIVISION IV.1**  
ARCHITECTURE AND ENGINEERING SERVICE CONTRACTS RELATING TO CONSTRUCTION WORK ON A BUILDING OR TRANSPORT INFRASTRUCTURE

*§1. Contract awarded following an evaluation based on measurement of the level of quality of tenders followed by a negotiation of the price of the contract*

**40.1.** A public body may, to award an architecture or engineering contract relating to construction work on a building or transport infrastructure, request a quality demonstration based on predetermined evaluation criteria in order to negotiate the price of the contract.

The public body opens the tenders only in the presence of the secretary of the selection committee or its representative at the designated place and on the date and time fixed in the tender documents and applies the provisions of section 10.1.

The public body evaluates the quality of a tender in accordance with the conditions in sections 1 to 7 of Schedule 2. If several service providers obtain identical final scores, the public body determines the ranking of the service providers concerned by a drawing of lots.

Within 15 days of the date of informing service providers of the result of the tender quality evaluation, the public body must begin negotiations on the price of the contract with the service provider whose acceptable tender obtained the highest final score, or who won the draw, where applicable.

The negotiation period to enter into a written agreement is 90 days. Not later than the 60th day of this period, if no agreement has been reached, the public body must inform the tenderer of the state of negotiations.

If the parties terminate negotiations or upon the expiry of the 90-day period, the public body negotiates the price of the contract, in accordance with the conditions in the fifth paragraph, with the subsequent service provider whose acceptable tender obtained the highest final score or who won the draw, where applicable. The public body proceeds in this manner until an agreement is entered into or until there are no more service providers whose tenders are acceptable.

The contract is awarded to the service provider, and the public body and the service provider enter into a written agreement.

The public body publishes in the electronic tendering system the names of the service providers who filed tenders within 4 working days following the awarding of the contract.

**40.2.** Sections 15.1, 18, 26 and 28 apply to the contract awarding process performed under this subdivision.

In the case of an invitation to tender, the composition of the selection committee may differ from that provided for in the second paragraph of section 26. In addition, the information referred to in section 28 must be communicated within 15 days of the evaluation of the quality of tenders.

**§2.** *Contract awarded following an evaluation based on measurement of the level of quality of tenders followed by an evaluation of the price submitted*

**40.3.** A public body may, to award an architecture or engineering service contract relating to construction work on a building or transport infrastructure, request a price and a quality demonstration.

Tenders are given a score out of a total of 100 points, including not less than 40 points and not more than 70 points for quality and not less than 30 points and not more than 60 points for the price.

The quality of a tender is evaluated in accordance with the conditions in sections 1 to 7 of Schedule 2.

The tendered price is evaluated on the basis of the gap between that price and

(1) the median market price (MMP), which is calculated on the basis of the prices of acceptable tenders submitted and the contract price estimated by the public body at the time of the call for tenders;

(2) the upper limit (UL) and lower limit (LL) of a price range determined on the basis of the median market price, which are calculated according to the following formulas:

$$LL = MMP \times (1 - X)$$

$$UL = MMP \times (1 + X)$$

where  $X$  is the proportion, expressed as a percentage, of the contract price estimated at the time of the call for tenders that the public body is prepared to pay in excess of that price, the proportion being not less than 40% and not more than 60%.

The maximum points relating to the price are attributed to the tender whose price is within the optimal market price range whose upper and lower limits are established by subtracting or adding, as the case may be, to the median market price an amount equivalent to 5% of the value of that median.

No points are attributed to a tender whose price is outside the price range determined in accordance with subparagraph 2 of the fourth paragraph.

In addition, the number of points attributed to a tender that is covered neither by the fifth nor the sixth paragraphs is calculated according to the following formula:

$$\frac{(Y - |MMP - P|)}{(Y - (MMP \times 5\%))} \times Z$$

where

$P$  is the price submitted;

$Y$  is the amount resulting from the difference between the upper limit of the price range and the median market price;

Z is the maximum points relating to price that can be attributed to a tender.

**40.4.** The tender documents must indicate the proportion, expressed as a percentage, of the contract price estimated at the time of the call for tenders that the public body is prepared to pay in excess of that price.

**40.5.** At the tender opening, the public body must disclose its estimate of the contract price at the time of the call for tenders.

**40.6.** The contract is awarded to the service provider whose tender obtained the highest final score.

**40.7.** The second paragraph of section 16 and sections 17, 18 and 26 to 28 apply to the contract awarding process performed under this subdivision.

If several service providers obtain identical results, the contract is awarded to the service provider which submits the lowest price or, if the price is identical, by a drawing of lots. In the case of an invitation to tender, the composition of the selection committee may differ from that provided for in the second paragraph of section 26.

### **§3. Contract awarded following a design competition**

**40.8.** A public body may, to award an architecture service contract or an engineering contract relating to construction work on a building or transport infrastructure or a contract for both architecture services and engineering relating to such work, hold a competition where a jury selects a design.

For the purpose of this Regulation, the candidates and finalists of a competition under this subdivision are, depending on the context, service providers or tenderer, submissions and proposals are tenders, and the winner of such a competition is the successful tenderer of a public call for tenders.

**40.9.** The public body constitutes a jury in charge of selecting one of the proposals submitted for the competition. The jury is made up of a selection committee established in accordance with section 26 and one or more persons of public renown. Those persons must be fewer than the members of the selection committee.

At least one of the jury members must be an architect for architecture service contracts and at least one of the jury members must be an engineer for engineering service contracts. For contracts involving both architecture and engineering services, the jury must include at least one architect and one engineer.

The public body may also invite any person with expertise to act as advisor to the jury at any stage of the competition.

**40.10.** The public body determines the situations in which a conflict of interest is deemed to arise between candidates and the person or persons of public notoriety who are members of the jury. Candidates who are in one of those situations become ineligible.

**40.11.** The public body conducts the competition by means of a two-stage public call for tenders.

At the first stage, the public body selects candidates by soliciting only a quality demonstration.

The public body opens the applications only in the presence of the secretary of the selection committee or its representative at the designated place and on the date and time fixed in the tender documents and applies the provisions of section 10.1.

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

The jury evaluates the quality of submissions in accordance with the conditions in sections 1 to 7 of Schedule 2. All submissions having the acceptable level of performance are retained. If only a limited number of candidates are invited to take part in the second stage, those having obtained the highest final scores are retained.

If the public body rejects a submission because the candidate is ineligible or the submission is non-compliant, the public body so informs the candidate, specifying the reason for the rejection, at the same time as the public body sends the selected candidates their invitation to take part, as finalists, in the second stage. At the same time, the public body publishes in the electronic tendering system the names of the candidates having taken part in the first stage as well as the names of the finalists among them.

At the second stage, the public body invites the finalists to submit a proposal that includes a quality demonstration. Despite section 9.2, the public body may allow finalists to submit a proposal that is not compatible with the electronic tendering system by a means that the public body indicates in that system. The public body ascertains the integrity of the proposal transmitted through that means.

To evaluate the quality of the proposal, the jury must take into account the extent to which the design that is the subject of the proposal is feasible and keeps to the estimated cost of the work. Proposals that do not reach an acceptable level of performance in regard to either of those two criteria are rejected.

The jury may invite the finalists to present the proposal and to interact with them. The mode of communication chosen must ensure that the members of the selection committee sitting on the jury remain anonymous.

The contract is awarded to the winner of the competition, that is the finalist whose proposal best meets all the criteria. The jury may also award prizes and honourable mentions to the other finalists.

Sections 18 and 28 apply.

**40.12.** The public body must indicate in the tender documents

(1) the name of the person or persons of public notoriety referred to in the first paragraph of section 40.9 as well as the rules aimed at preventing conflicts of interest between that person or persons on the one hand and the candidates and finalists on the other hand;

(2) whether the number of candidates invited to participate in the second stage is limited;

(3) the compensation payable to the finalists having completed the second stage;

(4) any honorary distinctions awarded to the finalists, other than the winner of the competition, having completed the second stage;

(5) fees payable to the winner of the competition for the performance of the contract.”.

**11.** Section 51 is amended by inserting the following subparagraph after subparagraph *d* of paragraph 4:

“(e) in the case of a contract awarded following an evaluation based on measurement of the level of quality of tenders followed by an evaluation of the price submitted, the estimated amount of the contract at the time of the call for tenders;”.

**12.** The following Division is added after section 51.3:

**“DIVISION 1.1**  
TASK ORDER CONTRACTS FOR ARCHITECTURE  
AND ENGINEERING SERVICES RELATING  
TO CONSTRUCTION WORK ON A BUILDING  
OR TRANSPORT INFRASTRUCTURE

**51.4.** Each year, following task order contracts entered into for architecture or engineering services relating to construction work on a building or transport infrastructure, the Ministère des Transports or the Société québécoise des infrastructures must make public at least the following information:

(1) the name of the service provider or providers;

(2) the date of conclusion of the contract with the service provider or providers;

(3) the number of task orders completed by the service provider or providers and the nature of the services requested;

(4) the amount paid for each task order completed;

(5) the estimated amount of the expenditure corresponding to the remaining period of the contract.”.

**13.** Contract award procedures begun before the coming into force of the provisions of this Regulation that apply to them are continued in accordance with the provisions in force on the date of the beginning of the procedures.

In addition, any contract in progress on the date of coming into force of the provisions of this Regulation that apply to it is continued in accordance with the provisions that are in force on the day before that coming into force.

**14.** Until section 9 of this Regulation comes into force, the first paragraph of section 40 of the Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4) must read as follows:

“40. In the case of engineering service contracts relating to transport infrastructure for which only a quality demonstration is solicited in accordance with section 23, the special awarding rules below may be applied with the authorization of the Minister of Transport: (1) following a single public call for tenders, contracts are awarded to more than one service provider, despite section 22; (2) a task order contract is awarded to more than one service provider, despite section 32.”

**15.** This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except sections 2, 3, 6, 7 and 9, section 10 insofar as it makes subdivision 1 of Division IV.1 of Chapter IV of the Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4), and section 12, which come into force on (*insert the date that is one year and 15 days after the date of publication of this Regulation in the Gazette officielle du Québec*).

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