

Despite the first and second paragraphs, a public body may, as regards the award procedures for a contract or contracts referred to in those paragraphs, apply sections 22 to 26 of this Regulation.

28. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except sections 18 to 20 which come into force on (insert the date that is 6 months after the date of publication of this Regulation in the *Gazette officielle du Québec*).

106777

Draft Regulation

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

Construction 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 construction contracts of public bodies, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation relaxes the rules applicable to construction contracts of public bodies. To that end, the draft Regulation proposes, in particular, allowing public bodies to use a simplified procedure for requesting a price quotation from contractors that have previously qualified instead of issuing a call for tenders. The draft Regulation also reviews certain compliance requirements in order to remove them from the mechanism of automatic rejection of tenders. Moreover, with regard to the analysis of tenders with an unusually low price, the draft Regulation provides for a simplified procedure that no longer requires setting up a committee.

The draft Regulation has no impact 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.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Robert Villeneuve at the above contact information.

SONIA LEBEL

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

Regulation to amend the Regulation respecting construction contracts of public bodies

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

1. Section 4 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5) is amended by inserting the following after subparagraph 2.1 of the second paragraph:

“(2.2) if applicable, a mention that individual information meetings will be held with the contractors pursuant to sections 22 and 26;”.

2. Section 5 is amended by striking out paragraph 7.

3. Section 7 is amended in the first paragraph

(1) by replacing subparagraph 2 by the following:

“(2) the absence of required security or the absence of a signature on such security;”;

(2) by striking out subparagraph 4.

4. The following is inserted after section 7.0.1:

“**7.0.2.** Compliance requirements must also indicate that a tender is non-compliant and may be rejected if

(1) the security provided does not comply with the form and conditions required, excepting the absence of a signature on the security; or

(2) the tender is conditional or restrictive.”.

5. Section 7.1 is amended by striking out “after authorization from the chief executive officer of the public body”.

6. Section 8 is amended by adding the following paragraph at the end:

“For the purposes of the first paragraph, contractor also means any person or entity that has, with the contractor, a common director, partner, officer or shareholder that has direct or indirect legal or de facto control of the person or entity and of the contractor.”

7. Section 9 is amended in the fifth paragraph

(1) by inserting “that does not entail an amendment to the tender documents” after “made by a contractor”;

(2) by replacing “less than 3 business days” by “5 business days or less”.

8. Section 11 is revoked.

9. Section 18 is amended by striking out subparagraph 1 of the second paragraph.

10. Section 18.2 is amended by replacing “the committee referred to in section 18.4” by “the public body”.

11. Section 18.4 is amended

(1) by replacing “forwards the tender to a committee set up for that purpose for analysis” in the first paragraph by “analyses the tender”;

(2) by striking out the second and third paragraphs.

12. Section 18.5 is amended

(1) by replacing “the committee” in the portion before paragraph 1 by “the public body”;

(2) by replacing paragraph 4 by the following:

“(4) the representations made by the contractor concerning the existence of particular facts that have an influence on the tendered price.”

13. Section 18.6 is amended

(1) by replacing “The committee” in the first paragraph by “The public body”;

(2) by striking out the second paragraph;

(3) by replacing “the person responsible for compliance with contractual rules” in the third paragraph by “the public body”.

14. Section 18.7 is amended by striking out “the contract rules compliance monitor in”.

15. Section 18.8 is amended

(1) by replacing “the committee” in the first paragraph by “the public body”;

(2) by replacing the second and third paragraphs by the following:

“If the public body upholds the conclusions of its report, it rejects the tender not later than before the expiry of the period of validity of tenders.”

16. Section 18.9 is revoked.

17. The following is inserted after section 19:

“**19.1.** Despite section 13, a public body may decide to evaluate the quality of a tender by making a call for tenders in 2 stages in accordance with subdivision 1 of Division 11 of this Chapter.”

18. Section 20.1 is amended by adding the following paragraph at the end:

“If a contractor has refused to perform several task order contracts awarded, the public body may modify the contractor’s rank or no longer solicit the contractor for subsequent task order contracts. The tender documents must provide for that possibility and the duration of its validity, and specify the number of refusals that gives rises to that eventuality.”

19. Section 21 is amended by replacing “3” by “5”.

20. Section 22 is amended by adding the following paragraphs at the end:

“During the second stage and prior to the invitation, the public body may hold individual information meetings with the selected contractors. The meetings must take place in the presence of a process auditor external to and designated by the public body.

The auditor is responsible for seeing that the meetings are held in a manner that is fair to all contractors and ensures the transparency of the contracting process under way.

The purpose of the meetings is to define the needs of the public body to each selected contractor and to then allow each contractor to submit a tender.

The auditor reports on his or her activities to the public body which then publishes the report in the electronic tendering system within 15 days after the contract is awarded.”.

21. The heading of subdivision 2 of Division II of Chapter III is replaced by “Contract awarded after evaluation based on measurement of quality level followed by calculation of quality-price ratio”.

22. Section 24 is amended in the first paragraph

(1) by inserting “a contract for construction work, despite section 13, or” after “to award”;

(2) by inserting “based on measurement of the quality level followed by calculation of the quality-price ratio” after “tender”.

23. Section 25 is amended by adding the following paragraph at the end:

“If several contractors obtain identical results, the public body awards the contract to a contractor according to one of the following rules, which must be specified in the tender documents:

(1) the contractor submitting the tender obtaining the highest score based on the quality criteria having the greatest importance for the carrying out of the contract; that awarding rule cannot be used if there is another criterion of equal importance;

(2) the contractor submitting the tender obtaining the highest final score based on quality;

(3) by a drawing of lots.”.

24. Section 26 is amended

(1) by inserting the following after the fifth paragraph:

“If several contractors obtain identical results in the case referred to in subparagraph 2 of the fifth paragraph, the public body selects a contractor according to one of the following rules, which must be specified in the tender documents:

(1) the contractor submitting the tender obtaining the highest score based on the quality criteria having the greatest importance for the carrying out of the contract; that selection rule cannot be used if there is another criterion of equal importance;

(2) by a drawing of lots.”;

(2) by adding the following paragraphs at the end:

“During the second stage and prior to the invitation, the public body may hold individual information meetings with the selected contractors. The meetings must take place in the presence of a process auditor external to and designated by the public body.

The auditor is responsible for seeing that the meetings are held in a manner that is fair to all contractors and ensures the transparency of the contracting process under way.

The purpose of the meetings is to define the needs of the public body to each selected contractor and to then allow each contractor to submit separately both a price and a quality demonstration complying with the evaluation conditions in Schedule 5.

The auditor reports on his or her activities to the public body which then publishes the report in the electronic tendering system within 15 days after the contract is awarded.”.

25. The Regulation is amended by inserting the following after section 26:

“**26.1.** Pursuant to section 26, the public body must award the contract to the contractor that submits the lowest adjusted price.

If several contractors obtain identical results, the public body awards the contract to a contractor according to one of the following rules, which must be specified in the tender documents:

(1) the contractor submitting the tender obtaining the highest score based on the quality criteria having the greatest importance for the carrying out of the contract; that awarding rule cannot be used if there is another criterion of equal importance;

(2) the contractor submitting the tender obtaining the highest final score based on quality during the second stage;

(3) by a drawing of lots.

“**26.2.** As regards the contracts referred to in sections 24 and 26, the price of tenders is unusually high if there is a differential between the price submitted in each tender and the value estimated by the public body for the expenditure. The differential must be sufficiently large for the public body to consider accepting none of the tenders received.

“**26.3.** Where a public body observes that the price of the tenders is unusually high, it may request a new document related to the tendered price from the contractors whose tender is acceptable.

In that case, the public body must comply with the following conditions:

(1) it cannot revise its needs that would entail an amendment to the contract;

(2) it must provide for a period of at least 7 days between the request for a document related to the price and the closing date and time for the receiving and opening of the documents related to the tendered price.

“**26.4.** A public body requesting a document related to the tendered price from the contractors concerned sends the contractors a notice containing the following in particular:

(1) details allowing the contractors to tender a new price;

(2) information on the place designated as well as the closing date and time for the receiving and opening of the documents related to the tendered price;

(3) a mention that a document related to the tendered price may be transmitted electronically only through the electronic tendering system;

(4) the fact that the public body is not bound to accept any tendered price;

(5) a mention that the absence of a document related to the tendered price or, in the case of a document related to a tendered price sent in paper form, the absence of a required signature of an authorized person on the document entails automatic rejection of a tender.

“**26.5.** The notice to be sent as provided in section 26.4 may be obtained only through the electronic tendering system.

“**26.6.** The tender is automatically rejected in the following cases:

(1) non-compliance with the closing date and time for receiving the documents related to the tendered price and, in the case of a document related to the tendered price sent in paper form, non-compliance with the place designated for its reception; despite the foregoing, a document related to the tendered price received after the closing date and time for receiving documents related to the tendered price may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body;

(2) the absence of the document related to the tendered price or, in the case of a document related to the tendered price sent in paper form, the absence of a required signature of an authorized person on the document;

(3) in the case of a document related to the tendered price transmitted electronically, the fact that it was not transmitted through the electronic tendering system or that it is unintelligible, infected or otherwise illegible once its integrity has been established by the electronic tendering system.

The filing by a contractor of several documents related to the tendered price for the same notice entails automatic rejection of the contractor’s tender. For the purposes of this paragraph, transmitting the same document related to the tendered price electronically and in paper form is deemed to be a filing of several documents related to the tendered price.

“**26.7.** Sections 7.0.1, 13.1 and 14 apply, with the necessary modifications, to a document related to the tendered price. As well, Division II.1 of Chapter II applies, with the necessary modifications, to the notice to be sent under section 26.4.

“**26.8.** The public body evaluates the documents related to the tendered price received, ensuring that the tenders are compliant.

If the public body rejects a tender because the document related to the tendered price is non-compliant, it must so inform the contractor and give the reason for the rejection not later than 15 days after awarding the contract.

26. Division III of Chapter III, comprising section 34, is revoked.

27. Section 36 is amended by inserting the following after the first paragraph:

“Where the public body plans to make a price request referred to in section 38, the public notice referred to in subparagraph 1 of the first paragraph must also indicate, with the necessary modifications, the information to be provided under paragraphs 3 to 6 of section 5 and section 7 applies, with the necessary modifications, to a contractor’s qualification application.”

28. Section 38 is amended by inserting “or a price request made to those contractors” at the end.

29. The Regulation is amended by inserting the following after section 38:

“**38.1.** A public body making a price request to qualified contractors sends the contractors a notice containing the following in particular

(1) a description of the construction work and conditions on which the contract is to be carried out;

(2) if applicable, a description of the options;

(3) the closing date and time for the receiving and opening of the documents related to the tendered price;

(4) if applicable, a mention that the document related to the tendered price must be transmitted electronically and that the transmission may only be done through the electronic tendering system.

“**38.2.** The notice to be sent as provided in section 38.1 may be obtained only through the electronic tendering system.

“**38.3.** The tender is automatically rejected in the following cases:

(1) non-compliance with the closing date and time for receiving the documents related to the tendered price; despite the foregoing, a document related to the tendered price received after the closing date and time for receiving documents related to the tendered price may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body;

(2) in the case of a document related to the tendered price transmitted electronically, the fact that it was not transmitted through the electronic tendering system or that it is unintelligible, infected or otherwise illegible once its integrity has been established by the electronic tendering system.

The filing by a contractor of several documents related to the tendered price for the same notice entails automatic rejection of the contractor’s tender. For the purposes of this paragraph, transmitting the same document related to the tendered price electronically and in paper form is deemed to be a filing of several documents related to the tendered price.

“**38.4.** Sections 7.0.1 and 13.1 apply, with the necessary modifications, to a document related to the tendered price.

“**38.5.** The public body opens the documents related to the tendered price only in the presence of a witness at the designated place and on the date and time set in the price request made to the contractors.

The public body publishes in the electronic tendering system the names of the contractors that submitted a document related to the tendered price within 4 business days after awarding the contract.

“**38.6.** The public body evaluates the documents related to the tendered price received, ensuring that the tenders are compliant.

If the public body rejects a tender because the document related to the tendered price is non-compliant, it must so inform the contractor and give the reason for the rejection not later than 15 days after awarding the contract.

“**38.7.** Sections 42 to 42.2 apply, with the necessary modifications, to a contract entered into following a price request.”

30. Division I of Chapter V, comprising section 39, is revoked.

31. The heading of Division II of Chapter V is amended by adding “, SUSTAINABLE DEVELOPMENT AND ENVIRONMENT” at the end.

32. Section 40 is amended

(1) by inserting “or a specification relating to sustainable development and the environment” in the first paragraph after “ISO standard”;

(2) by replacing “5” in the second paragraph by “10”.

33. Section 41 is amended by replacing “15” in the portion before paragraph 1 by “30”.

34. Section 41.1 is amended

(1) by replacing “60” in the first paragraph by “120”;

(2) by inserting “annually” in the second paragraph after “publishes”.

35. Section 41.2 is amended by adding the following at the end of the second paragraph:

“(4) the amount of any additional expenditure that has not been published in accordance with section 41.1.”

36. Section 42.1 is amended

(1) by replacing “60” in the first paragraph by “120”;

(2) by inserting “annually” in the second paragraph after “publishes”.

37. Section 42.2 is amended by adding the following at the end of the third paragraph:

“(5) the amount of any additional expenditure that has not been published in accordance with section 42.1.”

38. Section 48 is revoked.

39. Section 55 is amended by adding the following paragraph at the end:

“The situation of a contractor whose rank has been modified by a public body or from whom a public body no longer solicits task order contracts is not to be considered unsatisfactory performance pursuant to the second paragraph of section 20.1.”

40. Section 60 is revoked.

41. Schedule 5 is amended in section 8

(1) by replacing “15%” in the formula for the quality adjustment factor by “K”;

(2) by inserting the following paragraphs at the end:

“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.

For a contract for construction work referred to in section 24 or 26 of this Regulation, the public body determines the value of K in the public tender documents; that value cannot be less than 15% nor more than 30%;

For a mixed contract for construction work and professional services referred to in section 24 or 26 of this Regulation, the public body determines the value of K in the public tender documents; that value cannot be less than 15% nor more than 40%.”

42. 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 on which the procedures were begun.

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

Despite the first and second paragraphs, a public body may, as regards the award procedures for a contract or contracts referred to in those paragraphs, apply sections 33 to 37 of this Regulation.

43. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except sections 27 to 29 which come into force on *(insert the date that is 6 months after the date of publication of this Regulation in the Gazette officielle du Québec)*.

106776

Draft Regulation

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

Contracting by public bodies in the field of information technologies — 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 contracting by public bodies in the field of information technologies, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation relaxes the rules applicable to contracting by public bodies in the field of information technologies. To that end, the draft Regulation proposes, in particular, allowing public bodies to use a simplified procedure for requesting a price quotation from suppliers or service providers that have previously qualified instead of issuing a call for tenders. The draft Regulation also reviews certain compliance requirements in order to remove them from the mechanism of automatic rejection of tenders. Moreover, with regard to the analysis of tenders with an unusually low price, the draft Regulation provides for a simplified procedure that no longer requires setting up a committee.

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

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