

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

106780

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 relaxes the rules applicable to certain service 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 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.

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 certain service 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 certain service contracts of public bodies (chapter C-65.1, r. 4) 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 service providers pursuant to section 25;”.

2. Section 5 is amended by striking out paragraph 8.

3. Section 7 is amended by striking out subparagraph 3 of the first paragraph.

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 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, service provider also means any person or entity that has, with the service provider, 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 service provider.”.

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 service provider”;

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

8. Section 15 is amended by striking out subparagraph 1 of the second paragraph.

9. Section 21 is amended by adding the following paragraph at the end:

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

(1) the service provider 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 service provider submitting the tender obtaining the highest final score based on quality;

(3) by a drawing of lots.”

10. Section 25, as amended by section 5 of the Regulation to amend the Regulation respecting certain service contracts of public bodies, made by Order in Council 1747-2023 dated 6 December 2023, is further amended

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

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

(1) the service provider 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 replacing the ninth paragraph by the following:

“During the second stage and prior to the invitation, the public body may hold individual information meetings with the selected service providers. 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 service providers and ensures the transparency of the contracting process under way.

The purpose of the meetings is to define the public body’s needs to each selected service provider and to then allow each service provider 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.

If only one price is solicited, sections 10 to 15.1 apply.

Where the quality level of a tender is evaluated, sections 15 to 23 and 26 to 28 apply. In addition, if several service providers obtain identical results, the public body awards the contract to a service provider according to one of the following rules, which must be specified in the tender documents:

(1) the service provider 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 service provider submitting the tender obtaining the highest final score based on quality;

(3) by a drawing of lots.”

11. Section 27 is amended by striking out “, except that the condition in subparagraph 1 of the second paragraph of section 15 is that only one service provider must have submitted an acceptable tender”.

12. Section 29.1 is amended by replacing “the committee referred to in section 29.3” by “the public body”.

13. Section 29.3 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.

14. Section 29.4 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 service provider concerning the existence of particular facts that have an influence on the tendered price.”

15. Section 29.5 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 contract rules compliance monitor” in the third paragraph by “the public body”.

16. Section 29.6 is amended by striking out “the contract rules compliance monitor of”.

17. Section 29.7 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.”.

18. Section 29.8 is revoked.

19. Section 32 is amended by adding the following paragraph at the end:

“If a service provider has refused to perform several task order contracts awarded, the public body may modify the service provider’s rank or no longer solicit the service provider 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 rise to that eventuality.”.

20. The Regulation is amended by inserting the following after section 32:

“**32.1.** A task order contract is entered into for a term not exceeding 5 years, including any renewal.”.

21. Section 43 is amended by inserting the following after the first paragraph:

“Where the public body plans to make a price request referred to in section 45, 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 7 of section 5 and section 7 applies, with the necessary modifications, to a service provider’s qualification application;”.

22. Section 45 is amended by inserting “or a price request made to those providers. Despite the foregoing, a price request cannot be made in respect of an architecture or engineering services contract relating to construction work.” at the end.

23. The Regulation is amended by inserting the following after section 45:

“**45.1.** A public body requesting a price from the service providers sends them a notice containing the following in particular:

(1) a description of the services 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 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.

“**45.2.** The notice to be sent as provided in section 45.1 may be obtained only through the electronic tendering system.

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

(1) non-compliance with the closing date and time for receiving 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) the fact that the document related to the tendered price 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 service provider of several documents related to the tendered price for the same notice entails automatic rejection of the service provider’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.

45.4. Sections 7.0.1 and 10.1 apply, with the necessary modifications, to a document related to the tendered price. 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.

45.5. The public body opens the documents related to the tendered price only in the presence of the witness at the designated place and on the date and time set in the price request made to the service providers.

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

45.6. 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 service provider and give the reason for the rejection not later than 15 days after awarding the contract.

45.7. Sections 52 to 52.2 apply, with the necessary modifications, to a contract entered into following a price request.”

24. Division I of Chapter VI, comprising section 46, is revoked.

25. Section 51, as amended by section 11 of the Regulation to amend the Regulation respecting certain service contracts of public bodies, made by Order in Council 1747-2023 dated 6 December 2023, is further amended by replacing “15” in the portion before paragraph 1 by “30”.

26. Section 51.1 is amended

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

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

27. Section 51.2 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 51.1.”.

28. Section 52.1 is amended:

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

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

29. Section 52.2 is amended by adding the following paragraph at the end of the third paragraph:

“(5) the amount of any additional expenditure that has not been published in accordance with section 52.1.”.

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

“The situation of a service provider 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 32.”.

31. 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 25 to 29 of this Regulation.

32. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*, except sections 21 to 23 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*).

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