

9. The public body determines in the tender documents the value of K, which must range from 15% to 30%.

SCHEDULE 6

(s. 41)

COST OF LABOUR, MATERIALS AND EQUIPMENT

The contractor must prove each expense relating to a change. The cost of labour, materials and equipment attributable to making the change to the work corresponds to the actual costs of the contractor and subcontractors, in the following categories:

(1) wages and employment benefits paid to workers under an applicable collective agreement and to the foreman and, where applicable, the superintendent supervising the employees on the construction site;

(2) the travel and accommodation expenses of the additional employees required;

(3) the cost of all materials, products, supplies, including materials incorporated into the work by reason of the change to the work, including transportation, storage and handing expenses, the whole corresponding to the lowest price granted to the contractor and subcontractors;

(4) taxes and other duties imposed by any competent authority on the labour, materials and equipment required and to which the contractor is subject, excluding the goods and services tax (GST) and the Québec sales tax (QST) if the public body is exempt from those taxes;

(5) the cost for transporting and using additional equipment and tools that are required, other than hand tools used by the employees;

(6) the cost of additional quality control performed by the person responsible for quality assurance or the superintendent on the work relating to the change;

(7) applicable patent royalties and rights;

(8) additional insurance and security premiums that the contractor must pay as a result of the increase in the contract price;

(9) energy and heating expenses directly attributable to the change;

(10) the cost for the removal and disposal of waste and debris attributable to the change;

(11) the necessary additional protections, temporary installations and security devices;

(12) any other required additional labour, materials or equipment cost not specified in the preceding paragraphs and attributable to performing the change.

8425

Draft Regulation

An Act respecting contracting by public bodies (2006, c. 29)

Supply contracts of public bodies

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

The draft Regulation determines the conditions governing supply contracts entered into by public bodies subject to the Act respecting contracting by public bodies (2006, c. 29). In compliance with all applicable inter-governmental agreements, it aims to promote the objectives set out in section 2 of the Act respecting contracting by public bodies that include transparency in contracting processes, honest and fair treatment of tenderers, and accountability reporting by the chief executive officers of public bodies to verify the proper use of public funds.

The draft Regulation also proposes to revoke the provisions of the following regulations and by-laws currently applicable to supply contracts: the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, made by Order in Council 961-2000 dated 16 August 2000, the By-law respecting special rules governing supply contracts, construction contracts, and services contracts of the Société immobilière du Québec, approved by Order in Council 76-96 dated 24 January 1996, the By-law concerning special rules respecting certain contracts entered into by the Société québécoise d'assainissement des eaux, approved by Order in Council 1229-94 dated 17 August 1994, the Regulation respecting the application of the Act respecting health services and social services (R.R.Q., 1981, c. S-5, r.1) and the Regulation respecting contracts of the Corporation d'hébergement du Québec, approved by Order in Council 972-2001 dated 23 August 2001.

The draft Regulation has no significant impact on the public. It will lighten the administrative burden of enterprises since they will be subject to only one regulation, which should also reduce their administrative expenses.

Further information on the draft Regulation may be obtained by contacting Lucien Turcotte, Director, Réglementation en biens et services, Secrétariat du Conseil du trésor, 875, Grande-Allée Est, Québec (Québec) G1R 5R8; telephone: 418 644-3421; fax: 418 528-6877; e-mail: lucien.turcotte@sct.gouv.qc.ca

Any interested person wishing to comment on the draft Regulation may do so before the expiry of the 45-day period by writing to the Minister responsible for Government Administration and Chair of the Conseil du trésor, 875, Grande-Allée Est, Québec (Québec) G1R 5R8.

MONIQUE JÉRÔME FORGET,
*Minister responsible for
Government Administration and
Chair of the Conseil du trésor*

Regulation respecting supply contracts of public bodies

An Act respecting contracting by public bodies (2006, c. 29, s. 23)

CHAPTER I SCOPE

1. This Regulation applies to supply contracts referred to in subparagraph 1 of the first paragraph of section 3 of the Act respecting contracting by public bodies (2006, c. 29).

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

DIVISION I GENERAL

3. A public call for tenders must be made in accordance with the provisions of this Chapter.

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 6 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 and the time for sending an addendum set out in the second paragraph of section 9 may differ.

In the case of a delivery order contract or a contract involving quality evaluation, the public call for tenders must comply with the special provisions of Chapter III.

DIVISION II 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 of delivery;
- (3) the nature and amount of any required tender security;
- (4) whether or not an intergovernmental agreement within the meaning of section 2 of the Act applies;
- (5) the place where the tender documents or information may be obtained;
- (6) the place as well as the closing and opening dates and times, the closing date being not less than 15 days after the date on which the notice is published; and
- (7) the fact that the public body is not bound to accept any tender.

5. In its tender documents, a public body must provide

- (1) a description of the procurement requirements and terms of delivery;
- (2) in the case of a joint call for tenders within the meaning of section 15 of the Act, the identity of every public body and legal person established in the public interest that are parties to the joint call for tenders;
- (3) the eligibility requirements of suppliers and the compliance requirements for tenders;
- (4) a list of the documents or other items required from suppliers;

- (5) the tender opening procedure;
- (6) the contract award rule, including any calculation to be applied before awarding the contract; and
- (7) any other particular required under this Regulation.

In the case referred to in subparagraph 2 of the first paragraph, every party to a joint call for tenders must deal with the selected supplier, on the conditions specified in the tender documents.

6. In order to submit a tender, a supplier 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 supplier's name and accessible during regular business hours; and
- (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 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 supplier who fails to comply with any of those requirements is ineligible.

7. Compliance requirements must specify the cases that will entail automatic rejection of a tender, namely

- (1) the place or the closing date or time has not been complied with;
- (2) a required document is missing;
- (3) the required signature of an authorized person is missing;
- (4) an erasure of or correction to the tendered price is not initialed;
- (5) the tender is conditional or restrictive; or

(6) any other compliance requirement stated in the tender documents as entailing automatic rejection of a tender has not been complied with.

8. Provided that it is specified in the tender documents, a public body may refuse to consider any supplier who, in the two years preceding the tender opening date, has been given an unsatisfactory performance report by the public body, failed to follow up on a tender or contract or had a contract cancelled because of failure to comply with the contract conditions.

9. A public body may amend the tender documents by sending an addendum to the suppliers concerned.

If the amendment is likely to affect the prices, the addendum must be sent at least 5 days before the tender closing time; if that 5-day period cannot be complied with, the closing time must be extended by the number of days needed to ensure compliance with the 5-day period.

DIVISION III
CALLING FOR AND OPENING OF TENDERS

10. A public body solicits solely a price in order to award a supply contract.

11. Tenders are opened by the public body at a public opening in the presence of a witness at the designated place and on the date and time fixed 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 names of the suppliers and their respective total prices are disclosed, subject to subsequent verifications.

Within 4 business days, the public body must make the tender opening results available on the electronic tendering system.

DIVISION VI
EVALUATION OF TENDERS AND CONTRACT AWARDING

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

If the public body rejects a tender because the supplier is ineligible or the tender is non-compliant, it must so inform the supplier and give the reason for the rejection no later than 15 days after awarding the contract.

13. A public body awards the contract to the supplier who submits the lowest price.

14. If several suppliers obtain identical results following a call for tenders, the contract is awarded by a drawing of lots.

15. The public body awards the contract on the basis of the procurement requirements described and the rules established in the tender documents and according to the price submitted.

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) only one supplier submitted a compliant tender;
- (2) the supplier agreed to a new price; and

(3) it is the only change made to the conditions set out in the tender documents or to the tender in the course of the negotiation.

CHAPTER III SPECIAL RULES FOR AWARDING CONTRACTS

DIVISION I DELIVERY ORDER CONTRACTS

16. A public body may enter into a delivery order contract 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.

17. 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.

18. If the delivery order contract is entered into with more than one supplier, the orders are directed to the supplier who submitted the lowest price, unless the supplier cannot fill the orders, in which case the other suppliers are solicited according to their respective rank.

Such orders may, however, be awarded to any of the selected suppliers whose submitted price 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.

DIVISION II CONTRACTS INVOLVING QUALITY EVALUATION

19. Despite section 10, a public body may decide to evaluate the quality of a tender; in such a case, it must request a price and a quality demonstration based on predetermined evaluation criteria.

The public body must specify in the tender documents the rules to be used to evaluate the quality of tenders, including the evaluation criteria selected and, where applicable, their respective weighting.

The price and the quality demonstration must be presented separately so that the first paragraph of section 24 may apply. In addition to the cases referred to in section 7, the compliance requirements must state that failure to comply with the requirement will entail automatic rejection of a tender.

20. At the public opening of tenders under section 11, only the names of the suppliers are disclosed and the results of the opening are made available in accordance with the third paragraph of that section.

21. The public body must evaluate quality as provided in Schedule 1 or Schedule 2, as the case may be.

22. Where an evaluation is based on a minimum level of quality, the public body must apply the evaluation conditions in Schedule 1 and award the contract to the supplier who submitted the lowest price.

23. Where an evaluation is based on measurement of the level of quality followed by calculation of the price-quality ratio, the public body must apply the evaluation conditions in Schedule 2 and award the contract to the supplier who submitted the lowest adjusted price.

24. Tenders are to be evaluated by a selection committee set up for that purpose by the public body. The committee must evaluate quality without knowing the price submitted.

Where the evaluation of tenders is for awarding a contract involving an expenditure equal to or above the public tender threshold, the selection committee must be composed of a secretary in charge of coordinating activities and of at least three members.

25. For the purposes of section 15 in respect of a contract requiring quality evaluation, the condition in subparagraph 1 of the second paragraph of that section is that only one supplier must have submitted an acceptable tender.

26. The public body must inform each tenderer of the results of the tender quality evaluation within 15 days after awarding the contract.

If Schedule 1 applies, the particulars sent to tenderers are

(1) confirmation that their tender was accepted or not; and

(2) the name of and price submitted by the successful tenderer.

If Schedule 2 applies, the particulars sent to tenderers are

(1) confirmation that their tender was accepted or not;

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

(3) the name, quality score and price of the successful tenderer, and the resulting adjusted price.

CHAPTER IV SPECIAL CONTRACTS

DIVISION I ACQUISITION OF SAND, STONE, GRAVEL OR BITUMINOUS COMPOUNDS

27. A contract to acquire sand, stone, gravel or bituminous compounds involving an expenditure below \$200,000 may be entered into by mutual agreement.

DIVISION II CONTRACT RELATING TO RESEARCH AND DEVELOPMENT

28. A supply contract relating to research and development 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.

CHAPTER V CERTIFICATION OF GOODS

29. 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.

30. 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 certificated 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.

31. Except in the cases described in section 13 of the Act, every contract subsequent to the certification of goods is limited to the certified goods only and, where a contract involves an expenditure equal to or above the public tender threshold, it must be awarded through a public call for tenders.

CHAPTER VI CONDITIONS TO BE MET BEFORE ENTERING INTO CONTRACTS

DIVISION I REQUIRED AUTHORIZATION

32. The authorization of the chief executive officer of the public body is required for every contract whose expected term is greater than 3 years. Despite the foregoing, the chief executive officer of the public body may not authorize a delivery order contract whose expected term is greater than 5 years, including any renewal.

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 supplier submitted a compliant tender; or

(2) only one supplier submitted an acceptable tender following a quality evaluation under Division II of Chapter III.

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

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

34. Where the amount of a supply contract is \$100,000 or more, or where the amount of a supply subcontract is \$100,000 or more, the contract or subcontract may not be entered into with a Québec supplier or subcontractor whose business employs more than 100 persons unless the supplier or subcontractor has made a commitment to implement an affirmative action program that complies with the Charter of human rights and freedoms (R.S.Q., c. 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 or subcontractor outside Québec but within Canada whose business employs more than 100 persons, the supplier or subcontractor must provide an attestation to the effect that the supplier or subcontractor has already made a commitment to implement an employment equity program of the province or territory concerned, as applicable, or failing that, to implement a federal employment equity program.

35. The Chair of the Conseil du trésor is to cancel the attestation issued to any Québec supplier who does not fulfil a commitment to implement an affirmative action program. Such a supplier may not enter into a supply contract or subcontract as long as a new attestation has not been issued.

A supplier located outside Québec but in Canada whose attestation referred to in the second paragraph of section 34 has been revoked may not enter into a supply contract or subcontract as long as a new attestation has not been issued.

DIVISION III

QUALITY ASSURANCE, SUSTAINABLE DEVELOPMENT AND ENVIRONMENT

36. A public body may require a quality assurance system, including the ISO 9001:2000 standard, or a specification relating to sustainable development and the environment for the carrying out of a contract. 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 to submit a tender and grant to a supplier 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 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.

CHAPTER VII

ACCOUNTABILITY REPORTING

37. Following a public call for tenders, the public body must publish on the electronic tendering system, within 15 days of the awarding of the contract, the name of the successful tenderer and the amount of the contract.

In the case of a delivery order contract involving several suppliers, the public body must publish their names and their respective total price.

If the contract involves price lists whose scope or layout prevents an integral publication, the public body must indicate on the electronic tendering system how information on the results may be obtained.

38. The public body must publish on the electronic tendering system, at least once every 6 months, a list of the contracts involving an expenditure greater than \$25,000 entered into by mutual agreement or following an invitation to tender, except contracts involving confidential or protected information within the meaning of subparagraph 3 of the first paragraph of section 13 of the Act.

39. The list to be published pursuant to section 38 must contain at least the following information:

(1) the name of the supplier, the date and the amount of the contract;

(2) the nature of the goods covered by the contract; and

(3) in the case of a contract by mutual agreement involving an expenditure above the public tender threshold, the provision in the Act or Regulation under which the contract was awarded.

CHAPTER VIII CONTRACT MANAGEMENT CONDITIONS

DIVISION I SETTLEMENT OF DISPUTES

40. The public body and the supplier must attempt to amicably settle any difficulty that may arise out of a contract by resorting to the dispute resolution clauses in the contract, if any.

If the matter may not 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, a 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

41. A public body must record in a report the evaluation of any supplier whose performance is considered to be unsatisfactory.

42. 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 to the supplier.

43. A supplier may forward comments in writing on the report to the public body within 30 days following receipt of a report of unsatisfactory performance.

44. Within 30 days after the expiry of the time in section 43 or following receipt of the supplier's comments, as the case may be, the chief executive officer of the public body is to uphold or cancel the evaluation and inform the supplier of the decision. If the chief executive officer fails to act within the prescribed time, the supplier's performance is considered to be satisfactory.

DIVISION III PAYMENT

45. Payment of any contract entered into in contravention of the provisions of this Regulation is subject to authorization by the Minister responsible.

CHAPTER IX TRANSITIONAL AND FINAL

46. A public body must implement the provisions of subparagraph 2 of the first paragraph of section 5 within 2 years after the coming into force of this Regulation.

Within that period, the public body must at least state, in the tender documents, the public bodies and legal persons established in the public interest that are or are likely to be parties to the joint call for tenders.

In that case, the present and future parties to the joint call for tenders must deal with the selected supplier, on the conditions set out in the tender documents.

47. The provisions in the following regulations and by-laws that apply to supply contracts are revoked:

(1) the Regulation respecting supply contracts, construction contracts and service contracts of government departments and public bodies, made by Order in Council 961-2000 dated 16 August 2000;

(2) the By-law respecting special rules governing supply contracts, construction contracts, and services contracts of the Société immobilière du Québec, approved by Order in Council 76-96 dated 24 January 1996;

(3) the By-law concerning special rules respecting certain contracts entered into by the Société québécoise d'assainissement des eaux, approved by Order in Council 1229-94 dated 17 August 1994;

(4) the Regulation respecting the application of the Act respecting health services and social services (R.R.Q., 1981, c. S-5, r.1); and

(5) the Regulation respecting contracts of the Corporation d'hébergement du Québec, approved by Order in Council 972-2001 dated 23 August 2001.

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

SCHEDULE 1 (ss. 21, 22, 26)

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. 21, 23, 26)

QUALITY EVALUATION CONDITIONS FOR A CONTRACT AWARD BASED ON THE LOWEST ADJUSTED PRICE

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%.

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%.

8427

Draft Regulation

Environment Quality Act
(R.S.Q., c. Q-2)

Dishwashing detergents — Prohibition of sale

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1) and section 124 of the Environment Quality Act, that the Regulation to prohibit the sale of certain dishwashing detergents, appearing below, may be made by the Government on the expiry of 60 days following this publication.

The purpose of the draft Regulation is to reduce the phosphorus content of waste water from dwellings associated with the use of household dishwashing detergents. Currently, the contribution from dishwashing detergents to the total phosphorus content of domestic waste water before treatment is between 7% and 24%.

As of 1 July 2010, only products meeting the phosphorus content requirements will be permitted to be sold or distributed in Québec. While phosphorus may currently reach 8.7% by weight of the soap, that percentage will be reduced under the Regulation to a maximum of 0.5%, which is essentially the threshold level at which the analysis methods detect phosphorus content.

The economic impact associated with the coming into force of the Regulation will be negligible because of the manufacturers’ public voluntary commitment to comply with the requirement before the deadline of 1 July 2010. Retailers will have time to sell off inventories of detergents in their possession.

Further information on the draft Regulation to prohibit the sale of certain dishwashing detergents may be obtained by contacting Didier Bicchi, Head, Service des eaux municipales, Direction des politiques de l’eau, Ministère