



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 171
(2018, chapter 10)

An Act to enact the Act respecting the implementation of the Canadian Free Trade Agreement and to bring measures relating to contracting by public bodies into compliance with that agreement, the Trade and Cooperation Agreement between Ontario and Québec and the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States

**Introduced 22 February 2018
Passed in principle 3 May 2018
Passed 10 May 2018
Assented to 10 May 2018**

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EXPLANATORY NOTES

This Act enacts the Act respecting the implementation of the Canadian Free Trade Agreement.

The Act also amends the Act respecting contracting by public bodies and certain regulations made under that Act to bring them into compliance with various measures relating to public procurement provided for in the Canadian Free Trade Agreement, the Trade and Cooperation Agreement between Ontario and Québec and the Comprehensive Economic and Trade Agreement between Canada and the European Union and its Member States.

The Act provides, in particular, for

(1) including leasing contracts among the contracts subject to the conditions established under the Act respecting contracting by public bodies;

(2) applying certain rules to contracts entered into by subsidiaries of public bodies and of government enterprises;

(3) taking options into account in determining the estimated value of a government contract to be entered into; and

(4) enacting or amending rules concerning the qualification of suppliers, service providers and contractors.

Lastly, the Act includes various repealing and consequential provisions as well as transitional measures relating to public calls for tenders and qualification procedures that will begin on or after the coming into force of the provisions concerned of the Act.

LEGISLATION AMENDED BY THIS ACT:

- Act respecting contracting by public bodies (chapter C-65.1);
- Act respecting the Société du Plan Nord (chapter S-16.011);
- Integrity in Public Contracts Act (2012, chapter 25).

LEGISLATION REPEALED BY THIS ACT:

- Act respecting the implementation of the Agreement on Internal Trade (chapter M-35.1.1).

LEGISLATION ENACTED BY THIS ACT:

- Act respecting the implementation of the Canadian Free Trade Agreement (2018, chapter 10, section 1).

REGULATIONS AMENDED BY THIS ACT:

- Regulation respecting supply contracts, service contracts and construction contracts of bodies referred to in section 7 of the Act respecting contracting by public bodies (chapter C-65.1, r. 1.1);
- Regulation respecting certain supply contracts of public bodies (chapter C-65.1, r. 2);
- Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4);
- Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5);
- Regulation respecting contracting by public bodies in the field of information technologies (chapter C-65.1, r. 5.1).

Bill 171

AN ACT TO ENACT THE ACT RESPECTING THE IMPLEMENTATION OF THE CANADIAN FREE TRADE AGREEMENT AND TO BRING MEASURES RELATING TO CONTRACTING BY PUBLIC BODIES INTO COMPLIANCE WITH THAT AGREEMENT, THE TRADE AND COOPERATION AGREEMENT BETWEEN ONTARIO AND QUÉBEC AND THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION AND ITS MEMBER STATES

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ENACTMENT OF THE ACT RESPECTING THE IMPLEMENTATION OF THE CANADIAN FREE TRADE AGREEMENT

1. The Act respecting the implementation of the Canadian Free Trade Agreement, the text of which appears in this chapter, is enacted.

“ACT RESPECTING THE IMPLEMENTATION OF THE CANADIAN FREE TRADE AGREEMENT

“1. The purpose of this Act is to implement the Canadian Free Trade Agreement (the Agreement).

“2. The Minister responsible for this Act represents Québec on the Committee on Internal Trade.

“3. The Government may appoint persons qualified under the Agreement to be registered on the roster of individuals who may act as members of a Presiding Body.

“4. The Minister may appoint persons as Québec representatives to committees and working groups established under the Agreement and to any position the Minister considers necessary for the application of the Agreement.

“5. For the purpose of suspending benefits with respect to a Party or imposing retaliatory measures of equivalent effect against a Party in accordance with what is provided by the Agreement, the Government may

(1) suspend rights or privileges granted to the Party by the Government under the Agreement;

(2) modify or suspend the application of a measure with respect to the Party; and

(3) extend the application of a measure to the Party.

“Measure” means any law, regulation, directive, requirement, prescription, guideline, program, policy, administrative practice or other procedure.

“6. On being filed with the office of the Superior Court, the certified copy of an order for a Monetary Penalty or for Tariff Costs made by a Presiding Body in a final report has all the effects of a Superior Court judgment that has become final and becomes enforceable 60 days after the date on which it is made.

“7. No judicial proceedings may be brought against persons appointed under section 3 for acts performed in good faith in the performance of their functions as members of a Presiding Body.

“8. The Government designates the Minister responsible for the administration of this Act.”

ACT RESPECTING THE IMPLEMENTATION OF THE AGREEMENT ON INTERNAL TRADE

2. The Act respecting the implementation of the Agreement on Internal Trade (chapter M-35.1.1) is repealed.

CHAPTER II

CHANGES TO THE NORMATIVE FRAMEWORK APPLICABLE TO CONTRACTING BY PUBLIC BODIES

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

3. Section 3 of the Act respecting contracting by public bodies (chapter C-65.1) is amended by inserting the following paragraph after the second paragraph:

“A leasing contract is considered to be a supply contract.”

4. Section 4 of the Act, amended by section 90 of chapter 27 of the statutes of 2017, is again amended

(1) by inserting the following subparagraph after subparagraph 6 of the first paragraph:

“(6.1) subsidiaries of one or more public bodies referred to in subparagraph 4, 5 or 6 of this paragraph;”;

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

“For the purposes of subparagraph 6.1 of the first paragraph, a legal person or partnership controlled by one or more public bodies is a subsidiary of one or more public bodies.

A legal person is controlled by one or more public bodies when the body or bodies hold, directly or through legal persons the body or bodies control, more than 50% of the voting rights attached to the participations of the legal person or when the body or bodies can elect a majority of its directors.

A partnership is controlled by one or more public bodies when the body or bodies hold, directly or through legal persons the body or bodies control, more than 50% of the participations. However, a limited partnership is controlled by one or more public bodies when the body or bodies or a legal person the body or bodies control is the general partner of the partnership.”

5. Section 7 of the Act, amended by section 91 of chapter 27 of the statutes of 2017, is again amended

(1) by replacing the first paragraph by the following paragraph:

“Government enterprises listed in Schedule 3 to the Financial Administration Act (chapter A-6.001) and their subsidiaries must adopt a contracting policy. Those bodies must make their policy public not later than 30 days after its adoption.”;

(2) by inserting the following paragraph after the second paragraph:

“For the purposes of the first paragraph, a legal person or partnership that is controlled by one or more government enterprises and does not compete with the private sector is a subsidiary. The fourth and fifth paragraphs of section 4 apply, with the necessary modifications.”;

(3) by replacing “Section” in the third paragraph by “Furthermore, section”.

6. Section 8 of the Act, amended by section 92 of chapter 27 of the statutes of 2017, is again amended by replacing “in any of subparagraphs 2 to 4, 6 and 7 of the first paragraph” in the first paragraph by “in any of subparagraphs 2 to 4 and 6 to 7 of the first paragraph”.

7. Section 10 of the Act is amended by inserting “, including, if applicable, the value of the options,” after “involving an expenditure” in subparagraph 1 of the first paragraph.

ACT RESPECTING THE SOCIÉTÉ DU PLAN NORD

8. Section 13 of the Act respecting the Société du Plan Nord (chapter S-16.011) is repealed.

INTEGRITY IN PUBLIC CONTRACTS ACT

9. Section 94 of the Integrity in Public Contracts Act (2012, chapter 25) is repealed.

REGULATION RESPECTING SUPPLY CONTRACTS, SERVICE CONTRACTS AND CONSTRUCTION CONTRACTS OF BODIES REFERRED TO IN SECTION 7 OF THE ACT RESPECTING CONTRACTING BY PUBLIC BODIES

10. Section 1.2 of the Regulation respecting supply contracts, service contracts and construction contracts of bodies referred to in section 7 of the Act respecting contracting by public bodies (chapter C-65.1, r. 1.1) is amended

(1) by inserting the following subparagraphs after subparagraph 2 of the second paragraph:

“(2.1) the expected duration of the contract or the calendar for the delivery of the goods, the provision of the services or the performance of the construction work;

“(2.2) if applicable, a brief description of the options;”;

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

“For the purposes of this Regulation, “option” means a renewal option or an option concerning, as the case may be, the acquisition of additional goods identical to those initially acquired or the provision of additional services or performance of additional construction work of the same nature as those or that initially required, to the extent that the goods, services or work are or is offered at the same price and intended to fulfil the procurement requirements described under subparagraph 2 of the second paragraph.”

11. Section 1.11 of the Regulation is amended, in the first paragraph,

(1) by replacing “and the period of validity of the list of qualified enterprises or” in subparagraph 1 by “, the period of validity of the list of qualified enterprises and the means used to renew or cancel it or, if the period of validity is not specified, an indication of”;

(2) by replacing “so as to allow the qualification of other enterprises” in subparagraph 3 by “inviting other enterprises to qualify”;

(3) by adding the following subparagraph at the end:

“(5) an enterprise may, at any time, apply for qualification, in which case the body qualifies the enterprise within a reasonable time.”

REGULATION RESPECTING CERTAIN SUPPLY CONTRACTS OF PUBLIC BODIES

12. Section 1 of the Regulation respecting certain supply contracts of public bodies (chapter C-65.1, r. 2) is amended by inserting “and to the contract considered as such in accordance with the third paragraph of that section,” after “Act respecting contracting by public bodies (chapter C-65.1)”.

13. Section 4 of the Regulation, amended by section 231 of chapter 27 of the statutes of 2017, is again amended by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) a brief description of the procurement requirements, the place of delivery and the expected duration of the contract or the calendar for the delivery of the goods;”.

14. Section 7 of the Regulation is amended by replacing “the closing date” in subparagraph 1 of the first paragraph by “subject to the fourth paragraph of section 12, the closing date”.

15. Section 12 of the Regulation is amended by adding the following paragraph at the end:

“A tender received after the closing date and time for receiving tenders may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body.”

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

“CHAPTER V.1

“QUALIFICATION OF SUPPLIERS

“**32.1.** When a public body uses a qualification process to qualify suppliers before issuing a call for tenders for a supply contract,

(1) the qualification process must be preceded by a public notice to that effect on the electronic tendering system indicating, with the necessary modifications, the information required under subparagraphs 1, 2 and 4 to 6.1 of the second paragraph of section 4, except the period for receiving applications for qualification that may not be under 25 days following the date of publication of the public notice of qualification, the period of validity of the list of qualified suppliers and the means used to renew or cancel it or, if the period of validity is not specified, an indication of the method used to inform all interested persons of the time as of which that list will no longer be used;

(2) the list of qualified suppliers must be published on the electronic tendering system and every supplier must be informed of its acceptance for entry on the list or the reason for refusal if entry is denied;

(3) a public notice of qualification must be published again at least once a year inviting other suppliers to qualify during the period of validity of the list;

(4) the public notice of qualification must remain accessible on the electronic tendering system for the entire period of validity of the list; and

(5) a supplier may, at any time, apply for qualification, in which case the public body qualifies the supplier within a reasonable time.

The third paragraph of section 4, the first, third and fourth paragraphs of section 9 and Division II.1 of Chapter II apply, with the necessary modifications, to the qualification of suppliers.

“32.2. When the public body evaluates the quality of applications for qualification, it sets up a selection committee in accordance with the second paragraph of section 24 and applies the evaluation conditions in Schedule 1 or in sections 1 to 7 of Schedule 2.

“32.3. Every supply contract subsequent to the qualification of suppliers under section 32.1 that involves an expenditure equal to or above the public tender threshold must be awarded through a call for tenders open only to qualified suppliers.”

REGULATION RESPECTING CERTAIN SERVICE CONTRACTS OF PUBLIC BODIES

17. Section 1 of the Regulation respecting certain service contracts of public bodies (chapter C-65.1, r. 4) is amended by replacing “under the third paragraph of that section” by “in accordance with the fourth paragraph of that section”.

18. Section 4 of the Regulation, amended by section 236 of chapter 27 of the statutes of 2017, is again amended by inserting “and the expected duration of the contract or the calendar for the provision of the services” at the end of subparagraph 2 of the second paragraph.

19. Section 7 of the Regulation is amended by replacing “the closing date” in subparagraph 1 of the first paragraph by “subject to the third paragraph of section 12, the closing date”.

20. Section 12 of the Regulation is amended by adding the following paragraph at the end:

“A tender received after the closing date and time for receiving tenders may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body.”

21. Section 24 of the Regulation is amended by striking out the second and third paragraphs.

22. Section 43 of the Regulation, amended by section 239 of chapter 27 of the statutes of 2017, is again amended, in the first paragraph,

(1) by inserting “, the period of validity of the list of qualified service providers and the means used to renew or cancel it or, if the period of validity is not specified, an indication of the method used to inform all interested persons of the time as of which that list will no longer be used” at the end of subparagraph 1;

(2) by replacing subparagraph 3 by the following subparagraph:

“(3) a public notice of qualification is published again at least once a year inviting other service providers to qualify during the period of validity of the list;”;

(3) by adding the following subparagraph at the end:

“(5) a service provider may, at any time, apply for qualification, in which case the public body qualifies the service provider within a reasonable time.”

23. Section 45 of the Regulation is amended by replacing “public call for tenders only open” by “call for tenders open only”.

REGULATION RESPECTING CONSTRUCTION CONTRACTS OF PUBLIC BODIES

24. Section 4 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5), amended by section 241 of chapter 27 of the statutes of 2017, is again amended by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) a brief description of the construction work required, the site of the work and the expected duration of the contract or the calendar for the performance of the work;”.

25. Section 7 of the Regulation is amended by replacing “the closing date” in subparagraph 1 of the first paragraph by “subject to the third paragraph of section 15, the closing date”.

26. Section 15 of the Regulation is amended by adding the following paragraph at the end:

“A tender received after the closing date and time for receiving tenders may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body.”

27. Section 36 of the Regulation, amended by section 244 of chapter 27 of the statutes of 2017, is again amended, in the first paragraph,

(1) by striking out “pertaining to transport infrastructures” in the introductory clause;

(2) by inserting “, the period of validity of the list of qualified contractors and the means used to renew or cancel it or, if the period of validity is not specified, an indication of the method used to inform all interested persons of the time as of which that list will no longer be used” at the end of subparagraph 1;

(3) by replacing subparagraph 3 by the following subparagraph:

“(3) a public notice of qualification is published again at least once a year inviting other contractors to qualify during the period of validity of the list;”;

(4) by adding the following subparagraph at the end:

“(5) a contractor may, at any time, apply for qualification, in which case the public body qualifies the contractor within a reasonable time.”

28. Section 38 of the Regulation is amended by replacing “public call for tenders open” by “call for tenders open”.

REGULATION RESPECTING CONTRACTING BY PUBLIC BODIES IN THE FIELD OF INFORMATION TECHNOLOGIES

29. Section 1 of the Regulation respecting contracting by public bodies in the field of information technologies (chapter C-65.1, r. 5.1) is amended by replacing “under the third paragraph” in the first paragraph by “in accordance with the fourth paragraph”.

30. Section 4 of the Regulation, amended by section 246 of chapter 27 of the statutes of 2017, is again amended by replacing subparagraph 2 of the second paragraph by the following subparagraph:

“(2) a brief description of the procurement requirements, the place where the goods are to be delivered and the expected duration of the contract or the calendar for the delivery of the goods or the provision of the services, as the case may be;”.

31. Section 8 of the Regulation is amended by replacing “the closing date” in subparagraph 1 of the first paragraph by “subject to the fourth paragraph of section 26, the closing date”.

32. Section 26 of the Regulation is amended by adding the following paragraph at the end:

“A tender received after the closing date and time for receiving tenders may not, for that sole reason, be considered non-compliant if the delay is attributable solely to the public body.”

33. The heading of Chapter VII of the Regulation is amended by inserting “SUPPLIERS OR” after “OF”.

34. Section 54 of the Regulation, amended by section 250 of chapter 27 of the statutes of 2017, is replaced by the following section:

54. A public body may qualify suppliers or service providers prior to the acquisition process if

(1) the qualification process is preceded by a public notice to that effect on the electronic tendering system indicating, with the necessary modifications, the information required under subparagraphs 1, 2 and 6 to 10.1 of the second paragraph of section 4, except the period for receiving applications for qualification that may not be under 25 days following the date of publication of the public notice of qualification, the period of validity of the list of qualified suppliers or service providers and the means used to renew or cancel it or, if the period of validity is not specified, an indication of the method used to inform all interested persons of the time as of which that list will no longer be used;

(2) the list of qualified suppliers or service providers is published on the electronic tendering system and every supplier or service provider is informed of its acceptance for entry on the list or the reason for refusal if entry is denied;

(3) a public notice of qualification is published again at least once a year inviting other suppliers or service providers to qualify during the period of validity of the list;

(4) the public notice of qualification remains accessible on the electronic tendering system for the entire period of validity of the list; and

(5) a supplier or service provider may, at any time, apply for qualification, in which case the body qualifies the supplier or service provider within a reasonable time.

The third paragraph of section 4, the first, third and fourth paragraphs of section 11 and Division III of Chapter II apply, with the necessary modifications, to the qualification of suppliers or service providers.”

35. Section 56 of the Regulation is replaced by the following section:

“56. Except in the cases described in section 13 of the Act, every contract in the field of information technologies subsequent to the qualification is limited to qualified suppliers or service providers only and, if such a contract involves an expenditure equal to or above the public tender threshold, it must be awarded through a call for tenders open only to those suppliers or service providers.”

CHAPTER III

TRANSITIONAL AND FINAL PROVISIONS

36. Sections 3, 7, 10, 13 to 15, 18 to 21, 24 to 26 and 30 to 32 apply only to public calls for tenders made through a notice published on or after 10 May 2018.

37. Sections 4 and 5 apply only to public calls for tenders made through a notice published on or after *(insert the date of coming into force of section 90 of chapter 27 of the statutes of 2017)*.

38. Sections 11, 16, 22, 27 and 34 apply only to qualification procedures begun on or after *(insert the date of coming into force of section 231 of chapter 27 of the statutes of 2017)*.

39. Any contract entered into by a subsidiary referred to in section 4 or 7 of the Act respecting contracting by public bodies (chapter C-65.1) in progress on *(insert the date of coming into force of section 90 of chapter 27 of the statutes of 2017)* is continued in accordance with the Act respecting contracting by public bodies and the regulations made under that Act. If a provision of that Act or those regulations is incompatible with a provision of the contract, the latter provision prevails.

40. This Act comes into force on 10 May 2018, except sections 4 to 6 and 8, which come into force on *(insert the date of coming into force of section 90 of chapter 27 of the statutes of 2017)*, and sections 11, 16, 22, 27, 33 and 34, which come into force on *(insert the date of coming into force of section 231 of chapter 27 of the statutes of 2017)*.

