



NATIONAL ASSEMBLY

FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 108

**An Act to facilitate oversight of public
bodies' contracts and to establish the
Autorité des marchés publics**

Introduction

**Introduced by
Mr. Carlos J. Leitão
Minister responsible for Government Administration and
Ongoing Program Review and Chair of the Conseil du
trésor**

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EXPLANATORY NOTES

This bill establishes the Autorité des marchés publics (the Authority) to oversee all public procurement for public bodies and apply the Act respecting contracting by public bodies as regards ineligibility for public contracts, prior authorization to obtain public contracts or subcontracts and contractor performance evaluations in relation to the performance of contracts.

In particular, the Authority may examine the compliance of a tendering or awarding process for a public contract of a public body on the Authority's own initiative, after a complaint is filed by an interested person or on the request of the Chair of the Conseil du trésor or a bidder.

The Authority must also ensure that the contract management of the Ministère des Transports and any other public body the Government designates is carried out in accordance with the normative framework.

Various powers are conferred on the Authority, including the powers to audit and investigate and, following an audit or investigation, to make orders or recommendations or suspend or cancel a contract.

The bill determines the Authority's organizational and operational rules, in particular with respect to its administrative structure. It specifies that the Authority is to be composed of a president and chief executive officer and vice-presidents appointed by the Government. It also specifies certain governance measures to be applied by the Authority, such as establishing a strategic plan approved by the Government and rules of ethics.

Moreover, the Act respecting contracting by public bodies is amended in order to require bodies to publish a notice of intention before entering into certain contracts by mutual agreement and establish a procedure for receiving and examining the complaints filed with them about the tendering or awarding process for a public contract.

The Act respecting contracting by public bodies is also amended

(1) to ensure the permanent nature of the system of ineligibility for public contracts and harmonize it with the system of authorizations to contract;

(2) to allow the Government to require an enterprise to obtain an authorization to contract while it is in the process of performing a public contract or in order to enter into a public contract or subcontract involving an expenditure below the applicable authorization threshold;

(3) to allow the Authority to cancel an application for authorization to contract or suspend such an authorization if the enterprise concerned fails to communicate information;

(4) to prevent an enterprise that has withdrawn its application for authorization to contract or that has had its application cancelled from filing a new application within the year after the withdrawal or cancellation;

(5) to confer on the Conseil du trésor the power to give permission, in exceptional circumstances, to continue a contracting process despite a decision of the Authority;

(6) to introduce a penal offence for anyone who communicates or attempts to communicate with a member of a selection committee for the purpose of influencing the member and provide for a three-year prescriptive period for penal proceedings that begins to run from the time the prosecutor becomes aware of the commission of the offence without exceeding seven years since the offence was committed; and

(7) to limit the disclosure of information that allows the number of enterprises that asked for a copy of the tender documents or that tendered a bid to be known or that allows those enterprises to be identified.

Lastly, the bill amends the Tax Administration Act to allow the Agence du revenu du Québec to communicate to the Authority information obtained under fiscal laws that the Authority needs in order to apply the provisions concerning the system of authorizations to contract.

LEGISLATION AMENDED BY THIS BILL:

- Financial Administration Act (chapter A-6.001);
- Tax Administration Act (chapter A-6.002);

- Act respecting the Autorité des marchés financiers (chapter A-33.2);
- Building Act (chapter B-1.1);
- Cities and Towns Act (chapter C-19);
- Municipal Code of Québec (chapter C-27.1);
- Act respecting the Communauté métropolitaine de Montréal (chapter C-37.01);
- Act respecting the Communauté métropolitaine de Québec (chapter C-37.02);
- Act respecting contracting by public bodies (chapter C-65.1);
- Act respecting elections and referendums in municipalities (chapter E-2.2);
- Act respecting school elections (chapter E-2.3);
- Election Act (chapter E-3.3);
- Act respecting workforce management and control within government departments, public sector bodies and networks and state-owned enterprises (chapter G-1.011);
- Anti-Corruption Act (chapter L-6.1);
- Act respecting labour standards (chapter N-1.1);
- Public Protector Act (chapter P-32);
- Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2);
- Act respecting the Government and Public Employees Retirement Plan (chapter R-10);
- Act respecting the Pension Plan of Management Personnel (chapter R-12.1);
- Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20);
- Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01);

- Act respecting public transit authorities (chapter S-30.01);
- Integrity in Public Contracts Act (2012, chapter 25).

REGULATIONS AMENDED BY THIS BILL:

- Regulation of the Autorité des marchés financiers under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1);
- 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 supply contracts of public bodies (chapter C-65.1, r. 2);
- Regulation respecting 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 the register of enterprises ineligible for public contracts and oversight and monitoring measures (chapter C-65.1, r. 8.1);
- Regulation respecting contracting by public bodies in the field of information technologies (Order in Council 295-2016 (2016, G.O. 2, 1812)).

Bill 108

AN ACT TO FACILITATE OVERSIGHT OF PUBLIC BODIES' CONTRACTS AND TO ESTABLISH THE AUTORITÉ DES MARCHÉS PUBLICS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

CHAPTER I

ESTABLISHMENT AND ORGANIZATION

1. A public procurement authority is established under the name “Autorité des marchés publics” (the Authority).

The Authority is a legal person and a mandatary of the State.

2. The property of the Authority forms part of the domain of the State, but the execution of the obligations of the Authority may be levied against its property.

The Authority binds none but itself when it acts in its own name.

3. The Authority has its head office in the national capital at the location it determines. A notice of the location of the head office, and of any change in its location, must be published in the *Gazette officielle du Québec*.

4. The president and chief executive officer is appointed by the Government and assisted by one or more vice-presidents, also appointed by the Government.

The president and chief executive officer and the vice-presidents are chosen by a selection committee formed for that purpose from a list of persons declared qualified to hold those offices.

5. The minimum requirements to be appointed as president and chief executive officer or vice-president and to remain in that office are

(1) to be of good moral character; and

(2) not to have been found guilty anywhere of an offence for an act or omission that is either an offence under the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or an offence, referred to in section 183 of that Code, under any of the Acts listed in that section and that is related to the employment.

6. The president and chief executive officer's term is of a fixed duration of five years and may not be renewed. A vice-president's term is of a fixed duration of not more than five years and may be renewed. On the expiry of their terms, the president and chief executive officer remains in office until he or she is replaced, and the vice-presidents remain in office until they are replaced or reappointed, as the case may be.

The president and chief executive officer and the vice-presidents exercise their functions on a full-time basis.

7. The Government determines the remuneration, employee benefits and other terms of employment of the president and chief executive officer and the vice-presidents.

8. The president and chief executive officer is responsible for the administration and direction of the Authority.

The president and chief executive officer designates a vice-president or one or more members of the Authority's staff to replace him or her when absent or unable to act.

9. The vice-presidents assist the president and chief executive officer in the exercise of his or her functions and powers and exercise their administrative functions under the president and chief executive officer's authority.

10. Subject to the applicable legislative provisions, the president and chief executive officer may delegate any function or power under this Act or the Act respecting contracting by public bodies (chapter C-65.1) to one of the Authority's vice-presidents or any member of the Authority's staff. The decision is published on the Authority's website.

The president and chief executive officer may, in the instrument of delegation, authorize the subdelegation of specified functions and powers and, in that case, identifies the vice-president or staff member to whom they may be subdelegated.

11. The decisions made by the Authority and certified true by the president and chief executive officer, or by any other person authorized by the president and chief executive officer, are authentic. The same applies to the documents or copies of documents emanating from the Authority or forming part of its records when they have been signed or certified true by any such persons.

12. Subject to the conditions determined by by-law, the Authority may allow the signature of the president and chief executive officer or a delegatee referred to in the second paragraph of section 8 or in section 10 to be affixed by means of an automatic device on the documents determined by by-law.

13. A by-law made by the Authority establishes a staffing plan as well as the procedure for appointing the members of its staff and selection criteria.

Subject to the provisions of a collective agreement, such a by-law also determines the standards and scales of staff members' remuneration, employee benefits and other terms of employment in accordance with the conditions defined by the Government.

14. The conditions set out in paragraphs 1 and 2 of section 5 must be met for a person to be hired as a member of the Authority's staff and remain as such.

15. The president and chief executive officer and the vice-presidents may not have a direct or indirect interest in a body, enterprise or association that may cause their personal interest to conflict with the duties of their office. If the interest devolves to them by succession or gift, they renounce it or dispose of it with diligence.

Members of the Authority's staff who have a direct or indirect interest in a body, enterprise or association that may cause their personal interest to conflict with the Authority's interest must, on pain of dismissal, disclose it in writing to the president and chief executive officer and, if applicable, refrain from participating in any decision pertaining to the body, enterprise or association.

16. The Authority determines, by by-law, the rules of ethics and the disciplinary sanctions applicable to staff members.

17. The Authority must establish a strategic plan according to the form, content and timetable determined by the Government. The plan must state

- (1) the Authority's objectives and strategic directions;
- (2) the results targeted over the period covered by the plan;
- (3) the performance indicators to be used in measuring results; and
- (4) any other element determined by the Chair of the Conseil du trésor.

The plan requires the Government's approval.

CHAPTER II

MISSION

18. The Authority's mission is

- (1) to oversee all public contracts, in particular, tendering and awarding processes for those contracts;
- (2) to apply Chapter V.1 of the Act respecting contracting by public bodies concerning ineligibility for public contracts;

(3) to apply Chapter V.2 of that Act concerning the prior authorization required to obtain a public contract or subcontract;

(4) to apply Chapter V.3 of that Act concerning performance evaluations; and

(5) to establish the operating rules of the electronic tendering system in collaboration with the secretariat of the Conseil du trésor.

It is also the Authority's mission to oversee all other contracting processes determined by the Government, on the conditions it determines.

19. For the purposes of this Act,

(1) “public contract” means a contract described in the first or third paragraph of section 3 of the Act respecting contracting by public bodies involving an expenditure equal to or above the applicable minimum public tender threshold or a contract listed in the second paragraph of that section that a public body may enter into;

(2) “public body” means a body referred to in section 4 or section 7 of the Act respecting contracting by public bodies;

(3) “electronic tendering system” means the electronic tendering system referred to in section 11 of the Act respecting contracting by public bodies.

CHAPTER III

FUNCTIONS AND POWERS

DIVISION I

FUNCTIONS OF THE AUTHORITY

20. The Authority's functions are

(1) to examine the tendering or awarding process for a public contract following a complaint under Division I or II of Chapter IV or for the purposes of an intervention under Chapter V;

(2) to examine the contract management of the Ministère des Transports and any other public body the Government designates;

(3) to monitor public contracts particularly for the purpose of analyzing procurement trends and public bodies' contracting practices and identifying problematic situations that affect competition;

(4) to exercise the functions assigned to it under Chapters V.1 to V.3 of the Act respecting contracting by public bodies and, in particular, to keep the register of enterprises ineligible for public contracts and the register of enterprises authorized to enter into a public contract or subcontract; and

(5) to exercise any other function determined by the Government in relation to the Authority's mission.

DIVISION II

POWERS OF THE AUTHORITY

§1. — *Audit and investigation*

21. The Authority may conduct an audit to determine whether the tendering or awarding process for a public contract of a public body or the contract management of a public body referred to in paragraph 2 of section 20 is carried out in accordance with the normative framework to which the body is subject.

22. On the Authority's request, the public body being audited must send or otherwise make available to the Authority within the time it specifies all documents and information the Authority considers necessary to conduct the audit.

23. For the purposes of an audit, any authorized person may

(1) enter, at any reasonable hour, the establishment of a public body or any other premises in which relevant documents or information may be kept;

(2) use any computer, equipment or other thing that is on the premises to access data contained in an electronic device, computer system or other medium or to audit, examine, process, copy or print out such data; and

(3) require from the persons present any relevant information as well as the production of any book, register, account, contract, record or other relevant document and make copies.

Any person who has the custody, possession or control of documents referred to in this section must communicate them to the person conducting the audit and facilitate their examination by that person.

24. The person authorized to conduct the audit must, on request, produce identification and, as applicable, show the document attesting his or her authorization.

25. The Authority may conduct an investigation to ascertain whether the contract management of a public body referred to in paragraph 2 of section 20 is carried out in accordance with the normative framework to which the body is subject.

The Authority is then vested with the powers and immunity of commissioners appointed under the Act respecting public inquiry commissions (chapter C-37), except the power to order imprisonment.

26. The Authority may, in writing, entrust the mandate of conducting an audit to a person who is not a member of its staff and who meets the conditions set out in paragraphs 1 and 2 of section 5. For that purpose, the Authority may delegate the exercise of its powers to that person.

The Authority may also, on the same conditions, entrust the mandate of conducting an investigation to such a person. The person is then vested with the powers and immunity referred to in the second paragraph of section 25.

§2.— *Orders and recommendations*

27. When an audit or investigation is concluded, the Authority may

(1) order the public body to amend, to the Authority's satisfaction, its tender documents or cancel the public call for tenders if the Authority is of the opinion that the conditions of the call for tenders do not ensure the honest and fair treatment of tenderers, do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or are otherwise not compliant with the normative framework;

(2) order the public body not to follow up on its intention to enter into a public contract by mutual agreement if the Authority is of the opinion that a complainant that has expressed interest is capable of carrying out the contract according to the procurement requirements and obligations stated in the notice of intention, in which case the public body must issue a public call for tenders if it intends to enter into the contract;

(3) order the public body to call on an independent process auditor for the tendering processes the Authority indicates;

(4) designate an independent person to act as a member of a selection committee for the tendering of a public contract the Authority indicates;

(5) despite the prohibition to disclose information that allows a person to be identified as being a member of a selection committee under subparagraph 2 of the first paragraph of section 58.1 of the Act respecting contracting by public bodies, order the public body to send to the Authority, for approval, the composition of the selection committees for the tendering processes the Authority indicates; and

(6) when it exercises functions assigned to it under paragraph 2 of section 20, suspend, for the time it specifies, the performance of any public contract or cancel such a contract if the Authority is of the opinion that the seriousness of the breach observed as regards contract management justifies suspending or cancelling the contract.

If the Authority makes an order, it must publish the order on its website. If the order is made under subparagraph 1 or 2 of the first paragraph, the Authority

requires the operator of the electronic tendering system to enter a brief description of the order on the system without delay.

28. The Authority's decision under subparagraph 6 of the first paragraph of section 27 must include reasons and be sent without delay to the chief executive officer of the public body and the contractor concerned.

A decision referred to in the first paragraph to suspend the performance of a public contract becomes effective on the date and for the time the Authority specifies, and a decision to cancel a public contract becomes effective on the date the Authority specifies.

29. The Authority may also

(1) make recommendations to the Chair of the Conseil du trésor concerning the tendering or awarding processes for public contracts and give its opinion on any question submitted to it by the Chair concerning matters under the Authority's jurisdiction;

(2) make recommendations to the chief executive officer of a public body concerning the tendering or awarding processes for its contracts or, when the Authority exercises the functions assigned to it under paragraph 2 of section 20, make recommendations concerning the public body's contract management, which may propose corrective and appropriate follow-up measures and the implementation of any other measure, including oversight and monitoring measures;

(3) recommend to the Conseil du trésor that it require, on the conditions it determines, that a public body

(a) associate itself with another public body designated by the Conseil du trésor for the tendering or awarding processes the Conseil indicates, or

(b) entrust to another public body designated by the Conseil du trésor the responsibility for conducting the tendering or awarding processes the Conseil indicates;

(4) recommend to the Chair of the Conseil du trésor that the Chair recommend to the Government that it place a public body's contract management under the Authority's oversight;

(5) as part of its monitoring of public contracts, collect, compile and analyze information on such contracts and disseminate the resulting findings among the public bodies.

Subparagraphs 3 and 4 of the first paragraph do not apply to bodies of the administrative branch established to exercise adjudicative functions.

Subparagraph 3 of the first paragraph applies to bodies described in section 7 of the Act respecting contracting by public bodies to the extent that it concerns a tendering process.

For the purposes of subparagraphs 3 and 4 of the first paragraph and despite the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the Authority must send a copy of the record it has established to the Conseil du trésor or the Chair of the Conseil du trésor, as the case may be.

30. For the purposes of this Act, a public body’s chief executive officer is the person responsible for the day-to-day management of the body, such as the deputy minister, the president or the director general.

However, in the case of a general and vocational college or university-level educational institution, the chief executive officer corresponds to the board of governors and, in the case of a school board, to the council of commissioners.

A board or council referred to in the second paragraph may, by regulation, delegate all or part of the functions to be exercised by the chief executive officer to the executive committee, the director general or, in the case of a university-level educational institution, a member of the staff of the senior management within the meaning of the Act respecting educational institutions at the university level (chapter E-14.1).

§3.— *Other powers*

31. If the Authority issues recommendations, it may require that it be informed in writing, within the time specified, of the measures taken by the public body to follow up on the recommendations.

32. For the exercise of its functions, the Authority may, as provided by law, enter into an agreement with a government other than the Gouvernement du Québec, with a department or body of such a government or with an international organization or a body of such an organization.

The Authority may also enter into an agreement with a public body or any other person or partnership with a view to facilitating the application of this Act.

CHAPTER IV

COMPLAINTS

DIVISION I

COMPLAINTS RESULTING FROM A PUBLIC BODY'S DECISION

§1.—*Tendering process*

33. An interested person or partnership or the person's or partnership's representative may file a complaint with the Authority about the tendering process for a public contract if, after complaining to the public body that the tender documents contain conditions that do not ensure the honest and fair treatment of tenderers, do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or are otherwise not compliant with the normative framework, the person, partnership or representative disagrees with the public body's decision.

The complaint must be filed with the Authority not later than three days after the complainant receives the public body's decision.

§2.—*Awarding process*

34. An interested person or partnership or the person's or partnership's representative may file a complaint with the Authority about the awarding process for a public contract if, after expressing interest in carrying out the contract to the public body that published the notice of intention required by law, the person, partnership or representative disagrees with the public body's decision.

The complaint must be filed with the Authority not later than three days after the complainant receives the public body's decision.

DIVISION II

COMPLAINTS NOT RESULTING FROM A PUBLIC BODY'S DECISION

§1.—*Tendering process*

35. An interested person or partnership or the person's or partnership's representative may file a complaint with the Authority about the tendering process for a public contract if, after complaining as described in section 33, the person, partnership or representative has still not received the public body's decision two days before the tender closing date.

The complaint must be filed with the Authority not later than one day before the tender closing date indicated on the electronic tendering system.

36. An interested person or partnership or the person's or partnership's representative may also file a complaint with the Authority about the tendering process for a public contract if, after being informed of an amendment made to the tender documents during the period starting two days before the complaint filing deadline indicated on the electronic tendering system, the person, partnership or representative is of the opinion that the amendment contains conditions that do not ensure the honest and fair treatment of tenderers, do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or are otherwise not compliant with the normative framework.

The complaint must be filed with the Authority not later than two days before the tender closing date indicated on the electronic tendering system.

§2.—Awarding process

37. An interested person or partnership or the person's or partnership's representative may file a complaint with the Authority about the awarding process for a public contract if, after an expression of interest referred to in section 34, the person, partnership or representative has still not received the public body's decision two days before the projected contract date.

The complaint must be filed with the Authority not later than one day before the projected contract date indicated on the electronic tendering system.

38. An interested person or partnership or the person's or partnership's representative may also file a complaint with the Authority about the awarding process for a public contract if the notice of intention required by law was not published on the electronic tendering system.

DIVISION III

EXCLUSION

39. Despite Divisions I and II, no complaint may be filed concerning an amendment made to the tender documents in accordance with an order of the Authority or concerning tender documents for a contract whose object is such that it must be performed entirely outside Québec.

DIVISION IV

COMPLAINT PROCESSING

40. A complaint must be filed electronically with the Authority in the form it determines and in accordance with the procedure that it establishes. The procedure must, in particular,

- (1) specify how a complaint must be filed and how complaints are processed;

(2) indicate the information the complaint must include; and

(3) allow the complainant and the chief executive officer of the public body referred to in the complaint to submit observations.

The Authority must publish the procedure on its website.

41. The Authority may, on summary examination, dismiss any complaint that it considers abusive, frivolous or clearly unfounded, as well as any complaint that is made by a complainant who clearly does not have the required interest, that is received late or that has not been sent in accordance with section 40.

If the Authority dismisses a complaint, it must inform the complainant and give the reasons for its decision.

42. If the Authority considers that a complaint under Division I or II is admissible, the Authority informs the public body, which must in turn, without delay, submit its observations to the Authority and, as applicable, send the Authority a copy of the reasons for its decision on the complaint or the expression of interest that it processed.

43. In the case of a complaint about a tendering process, the Authority must, if need be, defer the submission of bids until a new tender closing date is set by the public body in accordance with the second paragraph of section 46.

In the case of a complaint about an awarding process, the Authority must, if need be, defer the projected contract date.

In the cases referred to in the first and second paragraphs, the Authority informs the public body concerned and the complainant of the deferment, and requires the operator of the electronic tendering system to make an entry to that effect on the system without delay.

44. The Authority has 10 days from the time it receives the public body's observations to make its decision.

If the complaint cannot be processed within the time period specified in the first paragraph, the Authority must agree with the public body on an additional time period to allow the Authority to finish processing the complaint. The Authority must inform the complainant of the new deadline.

However, if the body and the Authority cannot agree on an additional time period, the Authority has only an additional period of five days to make its decision. If the Authority fails to make a decision before the expiry of that additional 5-day period, it is deemed to have decided that the tendering or awarding process for the contract complies with the normative framework.

45. The Authority dismisses a complaint if

- (1) the complainant does not have the required interest;
- (2) the complaint concerns an amendment made to the tender documents in accordance with an order of the Authority;
- (3) the complaint concerns a contract whose object is such that it must be performed entirely outside Québec;
- (4) the complainant should have first filed a complaint with or expressed its interest to the public body;
- (5) the complainant refuses or neglects to provide, within the time specified by the Authority, the information or documents that the Authority requires; or
- (6) the complainant has pursued a judicial remedy based on the same facts as those set out in the complaint.

In all cases, the Authority sends the decision with reasons in writing to the complainant and the public body concerned.

46. When the examination of a complaint under Division I or II is concluded, the Authority sends its decision with reasons in writing to the complainant and the public body concerned.

If the Authority's decision on a complaint referred to in section 33, 35 or 36 allows the tendering process to continue, the public body must ensure that a time period of at least seven days is granted for tendering a bid if the decision results in an amendment to the tender documents. The time period must be of at least two days if the decision does not result in an amendment to the tender documents. The public body enters on the electronic tendering system a new tender closing date, as the case may be, that allows for those time periods.

47. It is forbidden to take a reprisal in any manner whatever against a person or partnership that files a complaint with the Authority or again to threaten to take a reprisal against a person or partnership so that he, she or it will abstain from filing a complaint with the Authority.

A person or partnership who believes himself, herself or itself to be a victim of a reprisal may file a complaint with the Authority so that the Authority may determine if the complaint is substantiated and make any recommendations it considers appropriate to the chief executive officer of the public body concerned by the reprisals. Sections 41 and 45 apply to the follow-up of the complaint, with the necessary modifications.

When the examination is concluded, the Authority informs the complainant of its findings and, if applicable, its recommendations.

48. No civil action may be instituted against a person or partnership for or as a consequence of a complaint that the person or partnership filed in good faith under this chapter, whatever the Authority's conclusions, or for or as a consequence of the publication of a report by the Authority under this Act.

Moreover, nothing in this Act restricts a complainant's right, after the Authority has processed the complainant's complaint, to pursue a remedy based on the same facts as those set out in the complaint.

49. Subject to the fourth paragraph of section 29 and section 60 and despite sections 9 and 83 of the Act respecting Access to documents held by public bodies and the Protection of personal information, the Authority may not communicate any document or information contained in a complaint record without the authorization of the public body that sent the record to the Authority.

CHAPTER V

INTERVENTION

50. The Authority may, on its own initiative or on the request of the Chair of the Conseil du trésor, examine a tendering or awarding process for a public contract if the public body concerned does not appear to be acting, in respect of that process, in compliance with the normative framework.

Chapter III and sections 43, 44 and 46 apply to the Authority's intervention, with the necessary modifications.

51. The Authority may also examine a tendering process for a public contract on the request of any person or partnership that has tendered a bid or on the request of the person's or partnership's representative if the process did not ensure the honest and fair treatment of tenderers, did not allow tenderers to compete although they are qualified to meet the stated procurement requirements or was otherwise not carried out in accordance with the normative framework.

A request under the first paragraph must be filed with the Authority within three months of the awarding of the tender.

Chapter III applies to the Authority's intervention, with the necessary modifications.

52. The Authority informs the public body's chief executive officer of the reasons for its intervention and invites him or her to submit observations.

CHAPTER VI

COMMUNICATION OF INFORMATION TO THE AUTHORITY

53. A person may communicate to the Authority information calling into question the compliance of a public body's contract management with the normative framework.

54. The Authority must take all measures necessary to protect the identity of persons who have communicated with it. The Authority may nonetheless communicate the identity of such persons to the Anti-Corruption Commissioner.

55. It is forbidden to take a reprisal against a person on the ground that the person has, in good faith, communicated information or cooperated in an audit or investigation conducted on the grounds of such a communication.

It is also forbidden to threaten to take a reprisal against a person so that the person will abstain from communicating information or cooperating in an audit or investigation conducted on the grounds of such a communication.

56. The demotion, suspension, dismissal or transfer of a person referred to in section 55 or any other disciplinary measure or measure that adversely affects such a person's employment or working conditions is presumed to be a reprisal within the meaning of that section.

57. Any person who believes himself or herself to be a victim of a reprisal may file a complaint with the Authority so that the Authority may determine whether the complaint is substantiated and make any recommendations it considers appropriate to the chief executive officer of the public body concerned by the reprisals. Sections 41 and 45 apply to the follow-up of the complaint, with the necessary modifications.

When the examination is concluded, the Authority informs the complainant of its findings and, if applicable, its recommendations.

CHAPTER VII

CANCELLATION BY OPERATION OF LAW

58. Subject to section 25.0.1 of the Act respecting contracting by public bodies, any public contract entered into after a tendering or awarding process continued by a public body before the Authority has made a decision on a complaint filed under Division I or II of Chapter IV, or in contravention of an order made by the Authority under subparagraph 1 or 2 of the first paragraph of section 27, is cancelled by operation of law from the time the body and its contractor receive notification from the Authority to that effect.

In addition, a contract entered into by mutual agreement by a public body without the prior publication of the notice of intention required by law is

cancelled by operation of law from the time the body and its contractor receive notification from the Authority to that effect.

CHAPTER VIII

MISCELLANEOUS PROVISIONS

59. Chapters III to V, when they concern a tendering process, apply to a process for the certification of goods or the qualification of service providers or contractors, with the necessary modifications.

60. If the Authority considers that information brought to its attention may potentially be disclosed under section 26 of the Anti-Corruption Act (chapter L-6.1), the Authority sends the information to the Anti-Corruption Commissioner as soon as possible.

61. Nothing contained in an audit or investigation record under this Act, including the resulting conclusions with reasons, may be construed as a declaration, recognition or extrajudicial admission of misconduct capable of establishing the civil liability of a party in a judicial proceeding.

62. Despite any inconsistent provision of any Act, the president and chief executive officer or a vice-president of the Authority, a member of the Authority's staff acting in the exercise of his or her powers or a mandatory referred to in section 26 may not be compelled to make a deposition in a judicial proceeding or a proceeding before a person or body exercising adjudicative functions concerning any confidential information obtained in the exercise of his or her functions or to produce a document containing such information, except to confirm its confidential nature.

63. No proceedings may be brought against the Authority, the president and chief executive officer or a vice-president of the Authority, a member of the Authority's staff or a mandatory referred to in section 26 by reason of omissions or acts performed in good faith in the exercise of his or her functions.

64. Except on a question of jurisdiction, no application for judicial review under the Code of Civil Procedure (chapter C-25.01) may be presented or injunction granted against the Authority, the president and chief executive officer or a vice-president of the Authority, a member of the Authority's staff or a mandatory referred to in section 26 in the exercise of his or her functions.

65. A judge of the Court of Appeal may, on an application, summarily annul any proceeding instituted, decision rendered or order or injunction made or granted contrary to sections 63 and 64.

CHAPTER IX

FINANCIAL PROVISIONS, ACCOUNTS AND REPORTS

66. The Authority's fiscal year ends on 31 March.

67. Not later than 30 September each year, the Authority must file its financial statements with the Chair of the Conseil du trésor and a report on its activities and governance for the previous fiscal year.

The financial statements and report must contain all the information required by the Chair.

The report must also contain information on the Authority's oversight activities. In this regard, the report specifies nature of the complaints that the Authority received under Chapter IV and indicates, for each type of complaint, the number received, dismissed upon summary examination, examined, refused or abandoned.

The report must also describe the interventions made by the Authority under Chapter V and its main conclusions, if any.

68. The Chair of the Conseil du trésor tables the Authority's financial statements and the report referred to in section 67 before the National Assembly within 30 days of receiving them or, if the Assembly is not in session, within 15 days of resumption.

69. The Authority provides the Chair of the Conseil du trésor with any information and any other report required by the Chair concerning the Authority's activities.

70. The Authority's books and accounts must be audited by the Auditor General each year and whenever the Government so orders.

The Auditor General's report must be filed with the report referred to in section 67 and the Authority's financial statements.

71. Every year, the Authority must submit its budget estimates for the following fiscal year to the Chair of the Conseil du trésor, according to the form, content and at the time determined by the Chair.

The estimates require the Government's approval.

72. The Authority determines the tariff of fees as well as the other forms of remuneration payable for the services it provides. The tariff and other forms of remuneration may vary according to the type of enterprise or the place where the enterprise mainly carries on its activities.

The forms of remuneration require the Government's approval.

73. The Government may, on the conditions and according to the terms it determines,

(1) guarantee the payment, in principal and interest, of any loan contracted by the Authority and any of its obligations; and

(2) authorize the Minister of Finance to advance to the Authority any amount that is considered necessary for the performance of its obligations or the pursuit of its mission.

[[The sums that the Government may be called on to pay under the first paragraph are taken out of the Consolidated Revenue Fund.]]

74. The Authority may not, without the Government’s authorization,

(1) contract a loan that causes the aggregate of its outstanding loans to exceed the amount determined by the Government;

(2) make a financial commitment in excess of the limits or in contravention of the terms and conditions determined by the Government; or

(3) acquire or transfer assets in excess of the limits or in contravention of the terms and conditions determined by the Government.

75. The sums received by the Authority must be applied to the payment of its obligations. Any surplus is retained by the Authority unless the Government decides otherwise.

CHAPTER X

AMENDING PROVISIONS

ACT RESPECTING CONTRACTING BY PUBLIC BODIES

76. Section 1 of the Act respecting contracting by public bodies (chapter C-65.1) is amended

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

“The purpose of this Act is also to determine certain conditions for the public contracts that a body described in section 7 may enter into with such a contractor.”;

(2) by replacing “in the first paragraph” in the second paragraph by “in the first or second paragraph. Such subcontracts are public subcontracts.”;

(3) by replacing “in the first or second paragraph” in the third paragraph by “in this section”.

77. Section 3 of the Act is amended by inserting “, to the extent that they are not for the acquisition of goods for commercial sale or resale or to be used to produce or provide goods or services for commercial sale or resale” at the end of subparagraph 1 of the first paragraph.

78. Section 4 of the Act is amended, in the first paragraph,

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

“(2) the budget-funded bodies listed in Schedule 1 to the Financial Administration Act (chapter A-6.001), except bodies referred to in section 6;”;

(2) by replacing subparagraph 4 by the following subparagraph:

“(4) bodies other than budget-funded bodies listed in Schedule 2 to the Financial Administration Act, even when exercising fiduciary functions, and the Commission de la construction du Québec, the Cree-Québec Forestry Board, the Office franco-québécois pour la jeunesse and the Office Québec/Wallonie-Bruxelles pour la jeunesse;”;

(3) by replacing “health and social services agencies and public institutions referred to in the Act respecting health services and social services (chapter S-4.2), legal persons and joint procurement groups referred to in section 383 of that Act,” in subparagraph 6 by “public institutions governed by the Act respecting health services and social services (chapter S-4.2), legal persons and joint procurement groups referred to in section 383 of that Act, the Nunavik Regional Board of Health and Social Services;”;

(4) by adding the following subparagraph after subparagraph 6:

“(7) any other entity designated by the Government.”

79. Section 7 of the Act is amended

(1) by replacing “Bodies other than those referred to in sections 4 to 6 and at least half of whose members or directors are appointed or elected by the Government or by a minister” in the first paragraph by “The bodies listed in Schedule 3 to the Financial Administration Act”;

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

“Section 11 and Chapters V.0.1.1, V.1 and V.2 apply to bodies referred to in the first paragraph, with the necessary modifications.”

80. Section 8 of the Act is amended by replacing “subparagraphs 2 to 4 and 6” in the first paragraph by “any of subparagraphs 2 to 4, 6 and 7”.

81. Section 13 of the Act is amended by replacing “subparagraphs 3 and 4” in the second paragraph by “subparagraphs 2 to 4”.

82. The Act is amended by inserting the following sections after section 13:

“13.1. The public body must, at least 15 days before entering into a contract by mutual agreement under subparagraph 4 of the first paragraph of section 13, publish on the electronic tendering system a notice of intention allowing any enterprise to express its interest in carrying out the contract. The notice of intention must, among other things, specify or include

(1) the name of the enterprise with which the public body intends to enter into a contract by mutual agreement;

(2) a detailed description of the public body’s procurement requirements and the contract obligations;

(3) the projected contract date;

(4) the reasons the public body invokes for entering into a contract by mutual agreement despite the fact that the contract involves an expenditure equal to or above the public tender threshold; and

(5) the address at which and the deadline by which an enterprise may electronically express interest and demonstrate that it is capable of carrying out the contract according to the procurement requirements and obligations stated in the notice, that deadline being five days before the projected contract date.

For the purposes of this Act, “enterprise” means a legal person established for a private interest, a general, limited or undeclared partnership or a natural person who operates a sole proprietorship.

“13.2. The public body must send its decision electronically at least seven days before the projected contract date to every enterprise that expressed interest in carrying out the contract. If that 7-day period cannot be complied with, the projected contract date must be deferred by the number of days needed to ensure compliance with that minimum period.

The public body must also inform the enterprise of its right to file a complaint under section 34 of the Act to facilitate oversight of public bodies’ contracts and to establish the *Autorité des marchés publics* (*insert the year and chapter number of that Act*) within three days after receiving the decision.

If no enterprise has expressed interest before the deadline under subparagraph 5 of the first paragraph of section 13.1, the public body may enter into the contract before the projected contract date specified in the notice of intention.”

83. The Act is amended by inserting the following chapter after section 21.0.2:

“CHAPTER V.0.1.1

“FILING OF A COMPLAINT WITH A PUBLIC BODY

“DIVISION I

“PROCEDURE

“21.0.3. A public body must provide equitable resolution of complaints filed with it in the course of the tendering or awarding process for a public contract. It must, for that purpose, establish a procedure for receiving and examining complaints.

The public body must make the complaint procedure available on its website.

To be admissible, a complaint must be sent electronically to the person in charge identified in the procedure or, failing that, to the chief executive officer of the public body. A complaint referred to in section 21.0.4 must be filed on the form determined by the Autorité des marchés publics under section 40 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*).

“DIVISION II

“COMPLAINT ABOUT ONGOING TENDERING PROCESS

“21.0.4. In the case of an ongoing public call for tenders, only an enterprise interested in participating in the tendering process or its representative may file a complaint about the tendering process on the grounds that the tender documents contain conditions that do not ensure the honest and fair treatment of tenderers, do not allow tenderers to compete although they are qualified to meet the stated procurement requirements or are otherwise not compliant with the normative framework.

The complaint must be filed with the public body not later than the complaint filing deadline indicated on the electronic tendering system. Such a complaint may pertain only to the content of the tender documents available on the electronic tendering system not later than two days before that deadline.

“21.0.5. The public body must send the complainant its decision electronically after the complaint filing deadline but not later than three days before the tender closing date. If necessary, the public body must defer the tender closing date.

If a public body has received two or more complaints about the same call for tenders, it must send its decisions at the same time.

The public body must defer the tender closing date by the number of days needed to allow a minimum period of seven days to remain from the date its decision is sent.

The public body must also, if applicable, inform each complainant of the complainant's right to file a complaint under section 33 of the Act to facilitate oversight of public bodies' contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) within three days after receiving the decision.

“DIVISION III

“COMPLAINT ABOUT CERTIFICATION OR QUALIFICATION PROCESS

“21.0.6. Sections 21.0.3 to 21.0.5 apply to a process for the certification of goods or the qualification of service providers or contractors, with the necessary modifications.”

84. The title of Division I of Chapter V.1 of the Act is amended by striking out “AND OVERSIGHT MEASURES”.

85. Section 21.1 of the Act is replaced by the following section:

“21.1. An enterprise that is found guilty, by a final judgment, of an offence listed in Schedule I is ineligible for public contracts for five years as of the recording of the finding of guilty in the register of enterprises ineligible for public contracts.”

86. Section 21.2 of the Act is amended

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

“If an associate of an enterprise is found guilty, by a final judgment, of an offence listed in Schedule I, the enterprise becomes ineligible for public contracts for five years as of the recording of the situation in the register of enterprises ineligible for public contracts.”;

(2) by replacing “the contractor” in the third paragraph by “the enterprise”.

87. The Act is amended by inserting the following section after section 21.2:

“21.2.0.0.1. An enterprise for which the Autorité des marchés publics (the Authority) refused to grant or renew an authorization required under Chapter V.2 or revoked such an authorization is ineligible for public contracts for five years as of the recording of the decision in the register of enterprises ineligible for public contracts or until the date preceding the date on which the enterprise is entered in the register of authorized enterprises, if the latter date is earlier.

In addition, the legal person in which the enterprise referred to in the first paragraph holds shares carrying more than 50% of the voting rights attached to the shares of the legal person's capital stock that may be exercised under

any circumstances becomes ineligible for public contracts for the same time as the enterprise as of the recording of the situation referred to in the first paragraph in the register of enterprises ineligible for public contracts.”

88. Section 21.2.0.1 of the Act is amended

(1) by replacing the introductory clause of the first paragraph by “No finding of guilty may be recorded under section 21.1 or the first paragraph of section 21.2 in the register of enterprises ineligible for public contracts provided for in section 21.6 if”;

(2) by replacing “the Autorité des marchés financiers (the Authority) under Chapter V.2 and, when it was considered, an authorization was granted to the contractor or the authorization held by the contractor” in subparagraph 1 of the first paragraph by “the Authority under Chapter V.2 and, when it was considered, an authorization was granted to the enterprise or the authorization held by the enterprise”;

(3) by replacing “l’Autorité des marchés financiers” in subparagraph 2 of the first paragraph in the French text by “l’Autorité”;

(4) by striking out the second paragraph.

89. Sections 21.2.1 and 21.3 of the Act are repealed.

90. Section 21.3.1 of the Act is replaced by the following section:

“21.3.1. An enterprise that becomes ineligible for public contracts and is in the process of performing a public contract is deemed to have defaulted on performance of the contract on the expiry of a period of 60 days after the date on which it becomes ineligible. However, the enterprise is not deemed to have defaulted as regards honouring the contract guarantees.”

91. Section 21.4 of the Act is repealed.

92. Section 21.4.1 of the Act is replaced by the following section:

“21.4.1. An enterprise that is ineligible for public contracts may not, for as long as it is ineligible, submit a bid to obtain a contract described in section 3 with a public body, enter into such a contract or enter into a public subcontract.”

93. Section 21.5 of the Act is repealed.

94. Section 21.6 of the Act is replaced by the following section:

“21.6. The Authority keeps a register of enterprises ineligible for public contracts.

The Authority must record in the register the finding of guilty against an enterprise or an associate of the enterprise not later than 20 days after the date on which the Authority was informed of the final judgment.

The Authority must also record in the register each decision by which it refused to grant or renew an authorization required under Chapter V.2 or revoked such an authorization.”

95. Section 21.7 of the Act is amended

(1) by replacing “concerning each contractor referred to in section 21.1, 21.2, 21.2.1 or 21.4” in the introductory clause by “for each enterprise ineligible to enter into public contracts”;

(2) by replacing paragraphs 3 to 5 by the following paragraphs:

“(3) as the case may be,

(a) the offence or offences of which the enterprise was found guilty,

(b) the offence or offences of which an associate of the enterprise was found guilty, resulting in the enterprise being named in the register, the associate’s name and the municipality in whose territory the associate resides,

(c) a reference to the Authority’s decision to refuse to grant or renew an authorization required under Chapter V.2 or to revoke such an authorization, or

(d) a reference to the Authority’s decision concerning the holder of shares carrying more than 50% of the voting rights attached to the shares of the enterprise’s capital stock that may be exercised under any circumstances, the shareholder’s name and the municipality in whose territory the shareholder resides;

(4) the projected end date of the enterprise’s ineligibility for public contracts; and

(5) any other information prescribed by regulation of the Authority.

A regulation of the Authority under this chapter is submitted to the Conseil du trésor, which may approve it with or without amendment.”

96. Section 21.8 of the Act is replaced by the following section:

“**21.8.** A public body designated in Schedule II must provide the information required under section 21.7 to the Authority in the cases, on the conditions and in the manner determined by regulation of the Authority.

The Government may amend that schedule.”

97. Section 21.9 of the Act is repealed.

98. Section 21.10 of the Act is replaced by the following section:

“21.10. The information contained in the register is public information and must be made available by the Authority on its website.”

99. Section 21.11 of the Act is replaced by the following section:

“21.11. The public bodies must, before entering into a contract described in section 3, ensure that the bidders, or the successful bidder, are not named in the register or, if they are named in the register, that their period of ineligibility for public contracts has ended or that the conditions prescribed in section 25.0.3 have been met.

Similarly, an enterprise that has entered into a contract described in section 3 with a public body must, before entering into any subcontract required for the performance of the contract, ensure the subcontractors are not named in the register or, if they are named in the register, that their period of ineligibility for public contracts has ended or that the conditions under section 25.0.3 have been met.”

100. Section 21.12 of the Act is amended

(1) by replacing “a contractor”, “the Chair of the Conseil du trésor informs the contractor in writing without delay” and “contractor’s” in the first paragraph by “an enterprise”, “the Authority informs the enterprise in writing without delay” and “its”, respectively;

(2) by replacing “The contractor must provide in writing to the Chair of the Conseil du trésor, within the time determined by the Chair” and “the contractor” in the second paragraph by “The enterprise must provide in writing to the Authority, within the time determined by the Authority” and “the enterprise”, respectively;

(3) by striking out the third paragraph;

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

“The Authority must inform each public body and body described in section 7 concerned, as soon as possible, of the information it obtains under the second paragraph.”

101. Sections 21.13 and 21.14 of the Act are repealed.

102. Section 21.15 of the Act is amended

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

“An enterprise that may have been mistakenly named in the register or in respect of whom inaccurate information is recorded in the register may ask the Authority to make the necessary rectifications in the register.”;

(2) by replacing “The Chair” in the second paragraph by “The Authority”.

103. Section 21.16 of the Act is amended by replacing “The Chair of the Conseil du trésor” and “the Chair’s” by “The Authority” and “its”, respectively.

104. Section 21.17 of the Act is amended

(1) by inserting “, including an expenditure resulting from an option provided in the contract,” after “involving an expenditure” in the first paragraph;

(2) by replacing “Autorité des marchés financiers (the Authority)” in the first paragraph by “the Authority”;

(3) by replacing the second paragraph by the following paragraph:

“An enterprise that wishes to enter into a public subcontract that involves an expenditure equal to or greater than that amount must also obtain such an authorization.”;

(4) by striking out the third paragraph.

105. The Act is amended by inserting the following sections after section 21.17:

“21.17.1. Despite the expenditure amount determined by the Government under section 21.17, the Government may determine that an authorization is required in respect of public contracts or subcontracts, even if they involve a lower expenditure amount.

The Government may also determine that an authorization is required in respect of a category of public contracts or subcontracts other than the categories determined under section 21.17 or determine that an authorization is required in respect of groups of public contracts or subcontracts, regardless of whether they are in the same category.

The Government may determine special terms for the applications for authorization that enterprises must file with the Authority in respect of such contracts or subcontracts.

“21.17.2. The Government may require an enterprise party to a public contract or subcontract that is in process to hold, within the time the Government determines, an authorization to contract. The Government may set a different time period than that specified in section 21.3.1 for the enterprise to be deemed to have defaulted on performance of the public contract.

The Government may determine special terms for the application for authorization that the enterprise must file with the Authority.

“21.17.3. An enterprise named in the register of enterprises ineligible for public contracts under section 21.1 or 21.2 may, at any time, file with the Authority an application for authorization to contract.

The granting of such an authorization entails, despite any inconsistent provision, the removal of the enterprise’s name from the register as well as the removal of the name of any associate of the enterprise named in the register under section 21.2.”

106. Sections 21.19 and 21.20 of the Act are repealed.

107. Section 21.22 of the Act is amended by replacing “required under section 21.17” by “required under sections 21.17 to 21.17.3”.

108. Section 21.23 of the Act is amended by replacing the second paragraph by the following paragraph:

“The application must be in the form prescribed by the Authority and be filed together with the information and documents prescribed by regulation of the Authority and the fee determined in accordance with section 72 of the Act to facilitate oversight of public bodies’ contracts and to establish the *Autorité des marchés publics* (*insert the year and chapter number of that Act*). The information and documents required may vary according to the type of enterprise or the place where the enterprise mainly carries on its activities.”

109. Section 21.28 of the Act is amended by replacing “whether the enterprise has, in the preceding five years, been found guilty” in subparagraph 0.1 of the second paragraph by “whether the enterprise, one of its shareholders not referred to in subparagraph 2 of the first paragraph of section 21.26, one of its associates or another person or entity that has direct or indirect legal or de facto control over it has, in the preceding five years, been found guilty”.

110. Section 21.30 of the Act is amended by adding the following paragraph at the end:

“An enterprise that, after the information is sent as required under the first paragraph, withdraws its application for authorization may not file a new application with the Authority within the year after the withdrawal unless the Authority allows it.”

111. Section 21.35 of the Act is amended

(1) by replacing “revoke its authorization” by “, as applicable, cancel the application for authorization or suspend the authorization”;

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

“The Authority may also cancel the application for authorization or suspend the authorization of an enterprise that fails to communicate to the Associate Commissioner referred to in section 21.30, within the time the Commissioner specifies, the information needed for the purposes of this chapter that the Commissioner requests.

An enterprise whose application for authorization is cancelled under this section may not file a new application with the Authority within the year after the cancellation unless the Authority allows it.

An enterprise whose authorization is suspended may nonetheless perform a public contract or subcontract if the enterprise was authorized on the date the contract or subcontract was entered into or, in the case of an enterprise responding to a call for tenders, if it was authorized on the closing date and time for the receipt and opening of tenders.”

II2. Section 21.43 of the Act is amended

- (1) by replacing “this Act” in the first paragraph by “this chapter”;
- (2) by striking out the second paragraph.

II3. Section 21.44 of the Act is replaced by the following section:

“21.44. A decision of the Government under the second paragraph of section 21.8 or the first paragraph of section 21.17 or under section 21.42 comes into force on the 30th day after its publication in the *Gazette officielle du Québec* or on any later date specified in the decision.

In addition, a decision of the Government under section 21.17.1 or 21.17.2 comes into force on the date it is made or on any later date specified in the decision and must be published in the *Gazette officielle du Québec* as soon as possible.

Sections 4 to 8, 11 and 17 to 19 of the Regulations Act (chapter R-18.1) do not apply to those decisions.”

II4. The Act is amended by adding the following chapter after section 21.48:

“CHAPTER V.3

“PERFORMANCE EVALUATION

“21.49. The Authority keeps and makes accessible to public bodies summaries of contractor performance evaluations, to be used to establish a performance rating for such purposes as the evaluation of the quality of a bid.

To that end, each public body designated by regulation must, in the cases and on the conditions determined by regulation, send the Authority a copy of the performance evaluations concerned.”

II5. Section 23 of the Act is amended

- (1) by striking out paragraphs 8 to 13;
- (2) by inserting the following paragraph after paragraph 13:

“(13.1) determine the cases and conditions in or on which contractor performance evaluations must be sent to the Authority for the purposes of the summaries under section 21.49 and the public bodies that must send such evaluations to the Authority;”.

II6. Section 25 of the Act is amended by inserting “or a body described in section 7” after “a public body” in the second paragraph.

II7. The Act is amended by inserting the following sections after section 25:

“25.0.1. The Conseil du trésor may, in exceptional circumstances, give a public body permission to enter into a contract by mutual agreement or to continue a public call for tenders when the contract or call for tenders is covered by an order of the Authority made under subparagraph 1 or subparagraph 2 of the first paragraph of section 27 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) if it is in the public interest that the contract be entered into or that the call for tenders continue despite the Authority’s decision. The Conseil du trésor may subject the permission to certain conditions.

The Conseil du trésor may also, in exceptional circumstances, give a public body permission to continue performing a contract when the contract is covered by a decision of the Authority under subparagraph 6 of the first paragraph of section 27 of that Act if it is in the public interest that the performance of the contract continue despite the Authority’s decision. The Conseil du trésor may subject the permission to certain conditions.

This section applies to a body described in section 7 for the continuation of a public call for tenders or the continued performance of a contract.

“25.0.2. Despite section 21.3.1 and for a reason in the public interest, a public body or a body described in section 7 may apply to the Conseil du trésor for permission to continue performing a public contract within 30 days after the enterprise becomes ineligible. The Conseil du trésor may subject the permission to certain conditions, including that the enterprise agree to the implementation, at the enterprise’s expense, of oversight and monitoring measures.

“25.0.3. Despite section 21.4.1, the Conseil du trésor may, in exceptional circumstances, give a public body or a body described in section 7 permission to enter into a contract with an ineligible enterprise or give an enterprise permission to enter into a subcontract directly related to the contract with an ineligible subcontractor, if it is in the public interest that the contract or subcontract be performed by that enterprise or subcontractor. The Conseil du trésor may subject the permission to certain conditions, including that the ineligible enterprise or subcontractor agree to the implementation, at the enterprise’s or subcontractor’s expense, of oversight and monitoring measures.

If a public body or a body described in section 7 considers that urgent action is required and there is a threat to human safety or property, its chief executive officer may allow a contract to be entered into with an ineligible enterprise or give an enterprise permission to enter into a subcontract directly related to a contract with an ineligible subcontractor. The body’s chief executive officer must however give the Chair of the Conseil du trésor notice in writing within 15 days.

The Chair of the Conseil du trésor publishes the name of the enterprise or subcontractor having entered into a contract or subcontract under the first or second paragraph by posting it on a website within 15 days after the Conseil’s decision or after the Conseil receives notice from the body’s chief executive officer. The Chair also publishes the name of the enterprise or subcontractor in the *Gazette officielle du Québec*.”

118. Section 25.1 of the Act is replaced by the following section:

“25.1. The Conseil du trésor may establish policies to determine conditions applicable to the designation of contract rules compliance monitors and establish measures to support them and ensure that their functions are exercised coherently.”

119. Section 26 of the Act is amended by inserting “, in particular, determine the cases in which the authorization of a public body’s chief executive officer is required. They may” after “Such directives may” in the first paragraph.

120. Section 27.1 of the Act is amended by replacing the first paragraph by the following paragraph:

“In order to encourage ongoing improvement in public bodies’ contract management, the Chair of the Conseil du trésor is competent to conduct an audit of the tendering or awarding of the contracts of a body or a group of bodies governed by this Act and their application of other contract management measures relating to those contracts.”

121. Section 27.4 of the Act is amended by striking out “, including oversight and monitoring measures, which may include the obligation to obtain the authorization of the Conseil du trésor in order to enter into public contracts”.

122. Section 27.5 of the Act is amended by replacing “the Authority to obtain, renew or keep an authorization required under section 21.17” by “the Authority to obtain, renew or keep an authorization required under sections 21.17 to 21.17.3”.

123. Section 27.7 of the Act is replaced by the following section:

“**27.7.** An enterprise that is ineligible for public contracts or that does not hold an authorization under the first paragraph of section 21.17 or under section 21.17.1 although required to hold one and that submits a bid for a public contract in response to a call for tenders or enters into a public contract is guilty of an offence and liable to a fine of \$2,500 to \$13,000 in the case of a natural person and \$7,500 to \$40,000 in any other case, unless the enterprise was given permission to enter into a contract under section 25.0.3.”

124. Section 27.8 of the Act is replaced by the following section:

“**27.8.** An enterprise that, in the course of a contract with a public body or with a body described in section 7, enters into a subcontract with an enterprise that is ineligible or does not hold an authorization under the first paragraph of section 21.17 or under section 21.17.1 although required to hold one is guilty of an offence and liable to a fine of \$2,500 to \$13,000 in the case of a natural person and \$7,500 to \$40,000 in any other case, unless the enterprise was given permission to enter into a contract under section 25.0.3. The ineligible or unauthorized subcontractor is also guilty of an offence and liable to the same fine.”

125. Section 27.9 of the Act is amended by replacing “, in accordance with the second paragraph of section 21.38, the name of every public body referred to in that paragraph” by “information required under the second paragraph of section 21.12 or under the second paragraph of section 21.38”.

126. The Act is amended by inserting the following section after section 27.10:

“**27.10.1.** Every person who, before the award of a tender, communicates or attempts to communicate, directly or indirectly, with a member of a selection committee for the purpose of influencing the member in respect of a call for tenders is guilty of an offence and liable to a fine of \$5,000 to \$30,000 in the case of a natural person and \$15,000 to \$100,000 in any other case.”

127. The Act is amended by inserting the following section after section 27.14:

“**27.14.1.** Penal proceedings must be instituted within three years after the time the prosecutor becomes aware of the commission of the offence. However, no proceedings may be instituted if more than seven years have elapsed since the date of the offence.”

128. Section 27.15 of the Act is repealed.

129. Section 58.1 of the Act is replaced by the following section:

“58.1. Despite section 9 of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1), the following may not be disclosed by a public body or a member of its staff:

(1) until the bids are opened, information that allows the number of enterprises that asked for a copy of the tender documents and the number of enterprises that tendered a bid to be known or that allows those enterprises to be identified; and

(2) information that allows a person to be identified as being a member of a selection committee constituted in accordance with the normative framework.

The prohibition under subparagraph 1 of the first paragraph also applies to the operator of the electronic tendering system, except with respect to information that allows an enterprise that requests a copy of the tender documents to be identified, if the enterprise expressly authorized the operator to disclose that information.”

130. Section 58.2 of the Act is repealed.

131. Schedule I to the Act is amended

(1) by inserting the following in the portion concerning offences under the Act respecting contracting by public bodies, by numerical order of the offences:

“27.10.1 Communicating or attempting to communicate with a selection committee member”;

(2) by inserting the following in order according to the alphanumerical designation of the Acts and regulations:

“

Regulation respecting contracting by public bodies in the field of information technologies, enacted by Order in Council 295-2016 (2016, G.O. 2, 1812)	65 with 83	Submitting a certificate from Revenu Québec that contains false or inaccurate information, producing the certificate of a third person, or falsely declaring that the supplier does not hold the required certificate
	66 with 83	Helping another person to contravene section 65

”.

132. The Act is amended by adding the following schedule after Schedule I:

“SCHEDULE II

“(Section 21.8)

“BODIES

“The Agence du revenu du Québec

“The Autorité des marchés financiers

“The Director of Criminal and Penal Prosecutions

“The Chief Electoral Officer”.

FINANCIAL ADMINISTRATION ACT

133. Schedule 2 to the Financial Administration Act (chapter A-6.001) is amended by inserting “Autorité des marchés publics” in alphabetical order.

TAX ADMINISTRATION ACT

134. The Tax Administration Act (chapter A-6.002) is amended by inserting the following subparagraph after subparagraph z.1 of the second paragraph of section 69.1:

“(z.2) the Autorité des marchés publics in respect of information required for the purposes of Chapter V.2 of the Act respecting contracting by public bodies (chapter C-65.1).”

135. Section 69.4.1 of the Act is amended by replacing “Autorité des marchés financiers” by “Autorité des marchés publics”.

136. Section 69.8 of the Act is amended by replacing “y and z.1” in the first paragraph by “y, z.1 and z.2”.

ACT RESPECTING THE AUTORITÉ DES MARCHÉS FINANCIERS

137. Section 9 of the Act respecting the Autorité des marchés financiers (chapter A-33.2) is amended by striking out “the Act respecting contracting by public bodies (chapter C-65.1) and” in the first paragraph.

138. Section 43.2 of the Act is repealed.

139. Section 44 of the Act is amended by replacing “the activity report, the financial statements and the financial report” in the second paragraph by “the activity report and financial statements”.

140. Section 749 of the Act is amended by striking out “, except for the provisions relating to the functions and powers exercised by the Authority for the purposes of the Act respecting contracting by public bodies (chapter C-65.1), which are under the responsibility of the Minister who is the Chair of the Conseil du trésor”.

BUILDING ACT

141. Section 65.1.0.1 of the Building Act (chapter B-1.1) is amended, in the first paragraph, by replacing “Autorité des marchés financiers” in subparagraph 1 by “Autorité des marchés publics” and by replacing “l’Autorité des marchés financiers” in subparagraph 2 in the French text by “l’Autorité des marchés publics”.

142. Section 65.1.0.2 of the Act is amended by replacing “l’Autorité des marchés financiers” in the first paragraph in the French text by “l’Autorité des marchés publics”.

143. Section 65.2.1 of the Act is amended by adding the following paragraph at the end:

“Despite the preceding paragraphs, if a holder’s licence has been restricted and the holder is also ineligible for public contracts under Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1), this section is replaced by sections 21.3.1 and 25.0.2 of that Act, with the necessary modifications.”

144. Section 65.4 of the Act is amended by replacing “a health and social services agency or a public institution under the Act respecting health services and social services (chapter S-4.2), a legal person or a joint procurement group referred to in section 383 of that Act,” in subparagraph 5 of the first paragraph by “a public institution governed by the Act respecting health services and social services (chapter S-4.2), a legal person or a joint procurement group referred to in section 383 of that Act, the Nunavik Regional Board of Health and Social Services,”.

CITIES AND TOWNS ACT

145. Section 573.3.3.2 of the Cities and Towns Act (chapter C-19) is amended by replacing “by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act” in the second paragraph by “by sections 25.0.2 and 25.0.3 of that Act and that conferred on the Chair of the Conseil du trésor by section 25.0.3 of that Act”.

146. Section 573.3.3.3 of the Act is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2,

21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

MUNICIPAL CODE OF QUÉBEC

147. Article 938.3.2 of the Municipal Code of Québec (chapter C-27.1) is amended by replacing “by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act” in the second paragraph by “by sections 25.0.2 and 25.0.3 of that Act and that conferred on the Chair of the Conseil du trésor by section 25.0.3 of that Act”.

148. Article 938.3.3 of the Code is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE MONTRÉAL

149. Section 118.1.1 of the Act respecting the Communauté métropolitaine de Montréal (chapter C-37.01) is amended by replacing “by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act” in the second paragraph by “by sections 25.0.2 and 25.0.3 of that Act and that conferred on the Chair of the Conseil du trésor by section 25.0.3 of that Act”.

150. Section 118.1.2 of the Act is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

ACT RESPECTING THE COMMUNAUTÉ MÉTROPOLITAINE DE QUÉBEC

151. Section 111.1.1 of the Act respecting the Communauté métropolitaine de Québec (chapter C-37.02) is amended by replacing “by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act” in the second paragraph by “by sections 25.0.2 and 25.0.3 of that Act and that conferred on the Chair of the Conseil du trésor by section 25.0.3 of that Act”.

152. Section 111.1.2 of the Act is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

ACT RESPECTING ELECTIONS AND REFERENDUMS IN MUNICIPALITIES

153. Section 648.1 of the Act respecting elections and referendums in municipalities (chapter E-2.2) is amended by replacing “to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7” in the second paragraph by “to the Autorité des marchés publics, in the manner determined in an agreement, the information required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7”.

ACT RESPECTING SCHOOL ELECTIONS

154. Section 223.5 of the Act respecting school elections (chapter E-2.3) is amended by replacing “to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7” in the second paragraph by “to the Autorité des marchés publics, in the manner determined in an agreement, the information required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7”.

ELECTION ACT

155. Section 569.1 of the Election Act (chapter E-3.3) is amended by replacing “to the Chair of the Conseil du trésor, in the manner determined in an agreement, the information required under paragraphs 1 to 3 of section 21.7” in the second paragraph by “to the Autorité des marchés publics, in the manner determined in an agreement, the information required under subparagraphs 1 to 3 and 5 of the first paragraph of section 21.7”.

ACT RESPECTING WORKFORCE MANAGEMENT AND CONTROL WITHIN GOVERNMENT DEPARTMENTS, PUBLIC SECTOR BODIES AND NETWORKS AND STATE-OWNED ENTERPRISES

156. Section 24 of the Act respecting workforce management and control within government departments, public sector bodies and networks and state-owned enterprises (chapter G-1.011) is amended by replacing “apply, with the necessary modifications, to such an audit” by “, as they read on (*insert the date that precedes the date of coming into force of sections 120 and 121 of this Act*), apply to such an audit, with the necessary modifications”.

ANTI-CORRUPTION ACT

157. Section 2 of the Anti-Corruption Act (chapter L-6.1) is amended by replacing “of sections 21.12 to 21.14 and 27.5 to 27.11” in paragraph 1 by “of sections 27.5 to 27.11 and 27.13”.

158. Section 10 of the Act is amended by replacing “Autorité des marchés financiers” in paragraph 1.1 by “Autorité des marchés publics”.

ACT RESPECTING LABOUR STANDARDS

159. Section 122 of the Act respecting labour standards (chapter N-1.1) is amended by adding the following subparagraph after subparagraph 10 of the first paragraph:

“(11) on the ground of a communication of information made in good faith by an employee under section 53 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) or the employee’s cooperation in an audit or investigation conducted on the grounds of such a communication.”

PUBLIC PROTECTOR ACT

160. Section 15 of the Public Protector Act (chapter P-32) is amended by adding the following paragraph at the end:

“(10) the Autorité des marchés publics.”

ACT RESPECTING THE PROCESS OF NEGOTIATION OF THE COLLECTIVE AGREEMENTS IN THE PUBLIC AND PARAPUBLIC SECTORS

161. Schedule C to the Act respecting the process of negotiation of the collective agreements in the public and parapublic sectors (chapter R-8.2) is amended by inserting “— The Autorité des marchés publics” in alphabetical order.

ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

162. Schedule I to the Act respecting the Government and Public Employees Retirement Plan (chapter R-10) is amended by inserting “the Autorité des marchés publics” in paragraph 1, in alphabetical order.

ACT RESPECTING THE PENSION PLAN OF MANAGEMENT PERSONNEL

163. Schedule II to the Act respecting the Pension Plan of Management Personnel (chapter R-12.1) is amended by inserting “the Autorité des marchés publics” in paragraph 1, in alphabetical order.

ACT RESPECTING LABOUR RELATIONS, VOCATIONAL TRAINING AND WORKFORCE MANAGEMENT IN THE CONSTRUCTION INDUSTRY

164. Section 7.5 of the Act respecting labour relations, vocational training and workforce management in the construction industry (chapter R-20) is amended by replacing “21.19” in paragraph 3 by “25.0.2”.

ACT RESPECTING MIXED ENTERPRISE COMPANIES IN THE MUNICIPAL SECTOR

165. Section 41.1 of the Act respecting mixed enterprise companies in the municipal sector (chapter S-25.01) is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

ACT RESPECTING PUBLIC TRANSIT AUTHORITIES

166. Section 108.1.1 of the Act respecting public transit authorities (chapter S-30.01) is amended by replacing “by section 21.3 of that Act and that conferred on the minister responsible by section 21.5 of that Act” in the second paragraph by “by sections 25.0.2 and 25.0.3 of that Act and that conferred on the Chair of the Conseil du trésor by section 25.0.3 of that Act”.

167. Section 108.1.2 of the Act is amended

(1) by replacing “21.17 to 21.20, 21.25, 21.34, 21.38, 21.39, 21.41, 27.6 to 27.9, 27.11, 27.13 and 27.14” in the first paragraph by “21.3.1, 21.17 to 21.17.2, 21.18, 21.25, 21.34, 21.35, 21.38, 21.39, 21.41, 25.0.2, 25.0.3, 27.6 to 27.9, 27.11, 27.13, 27.14 and 27.14.1”;

(2) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the first paragraph;

(3) by inserting “or is designated by the Government under section 21.17.1 of that Act” after “21.17 of that Act” in the second paragraph;

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

“For the purposes of section 21.17 of that Act, a natural person is considered to be an enterprise even if the person does not operate a sole proprietorship.”

INTEGRITY IN PUBLIC CONTRACTS ACT

168. Sections 3, 4 and 9, paragraph 6 of section 13, section 14, paragraph 1 of section 18 and sections 31 to 39, 43 to 45, 47, 48, 51, 52, 56, 69, 71 to 74, 81, 82, 88 to 90 and 93 of the Integrity in Public Contracts Act (2012, chapter 25) are repealed.

169. Section 102 of the Act, amended by section 234 of the Act to group the Commission de l'équité salariale, the Commission des normes du travail and the Commission de la santé et de la sécurité du travail and to establish the Administrative Labour Tribunal (2015, chapter 15), is again amended by replacing “, except sections 3, 4, 5 and 9, paragraph 6 of section 13, sections 14 and 16, paragraph 1 of section 18, sections 23, 24, 31 to 39, 43 to 45, 47, 48, 51, 52, 56, 69, 71 to 74, 78, 79, 81 and 82, which come” by “, except section 5, which comes”.

REGULATION OF THE AUTORITÉ DES MARCHÉS FINANCIERS UNDER AN ACT RESPECTING CONTRACTING BY PUBLIC BODIES

170. The title of the Regulation of the Autorité des marchés financiers under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1) is amended by replacing “Autorité des marchés financiers” by “Autorité des marchés publics”.

171. Section 1 of the Regulation is amended by replacing “under section 21.17” by “under sections 21.17 to 21.17.3”.

172. Section 2 of the Regulation is amended by replacing “Autorité des marchés financiers” in the first paragraph by “Autorité des marchés publics”.

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

173. 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 by inserting the following after section 1:

“1.1. For the purposes of this Regulation, the electronic tendering system is the system approved by the Government under section 11 of the Act.

“CHAPTER I.1

“PUBLIC CALL FOR TENDERS

“1.2. Every public call for tenders for a contract governed by an intergovernmental agreement 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 body;
- (2) a brief description of the goods, services or construction work and the place where the goods are to be delivered or the place where the construction work is to be performed, as the case may be;
- (3) the nature and amount of any required tender security;
- (4) the intergovernmental agreement within the meaning of section 2 of the Act that applies;
- (5) the place where the tender documents and information may be obtained;
- (6) the place and the closing date and time for the receipt and opening of tenders; the time for receiving tenders may not be less than the time prescribed in the intergovernmental agreement that applies;
- (7) the filing deadline for complaints under section 21.0.4 of the Act, which is determined by adding to the date of the notice of the call for tenders a period corresponding to half the time for receiving tenders but which may not be less than 10 days; and
- (8) the fact that the body is not bound to accept any tender.

“1.3. A body may amend its tender documents by means of an addendum sent, as the case may be, to the suppliers, service providers or contractors concerned by the call for tenders. An addendum must contain the information relating to the filing deadline for complaints under section 21.0.4 of the Act or section 36 of the Act to facilitate oversight of public bodies’ contracts and to establish the *Autorité des marchés publics* (*insert the year and chapter number of that Act*) or specify whether the amendments to the tender documents result from a decision of the *Autorité des marchés publics*.

If the amendment is likely to affect the prices, the addendum must be sent at least seven days before the tender closing date; if that 7-day period cannot be complied with, the closing date must be deferred by the number of days needed to ensure compliance with the minimum period.

An amendment made before the complaint filing deadline indicated on the electronic tendering system that modifies the tender closing date defers the

complaint filing deadline by a period corresponding to half of the time by which the bid submission period is extended.

Subject to the second paragraph, an amendment made less than three days before the tender closing date results in a two-day deferral of that deadline.

Provided that it is specified in the tender documents, the body may reserve the right to not consider a request for details made, as the case may be, by a supplier, service provider or contractor if the request is sent to the body less than two working days before the tender closing date and time.”

174. The Regulation is amended by inserting the following chapter after Chapter II:

“CHAPTER II.1

“INFORMATION TO BE PUBLISHED

“9.1. Following a public call for tenders, the body publishes on the electronic tendering system, within 15 days of the conclusion of the contract, the description of the contract. That description contains at least

- (1) the name of the supplier, service provider or contractor;
- (2) the nature of the goods, services or construction work covered by the contract;
- (3) the date of conclusion of the contract;
- (4) the amount of the contract.”

REGULATION RESPECTING SUPPLY CONTRACTS OF PUBLIC BODIES

175. Section 4 of the Regulation respecting supply contracts of public bodies (chapter C-65.1, r. 2), amended by section 3 of the Regulation to amend the Regulation respecting supply contracts of public bodies, enacted by Order in Council 292-2016 (2016, G.O. 2, 1803), is again amended by inserting the following subparagraph after subparagraph 6 of the second paragraph:

“(6.1) the filing deadline for complaints under section 21.0.4 of the Act, which is determined by adding to the date of the notice of the call for tenders a period corresponding to half the time for receiving tenders but which may not be less than 10 days;”.

176. Section 9 of the Regulation, amended by section 7 of the Regulation to amend the Regulation respecting supply contracts of public bodies, is again amended

(1) by adding the following sentence at the end of the first paragraph: “An addendum must contain the information relating to the filing deadline for complaints under section 21.0.4 of the Act or section 36 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) or specify whether the amendments to the tender documents result from a decision of the Autorité des marchés publics.”;

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

“An amendment made before the complaint filing deadline indicated on the electronic tendering system that modifies the tender closing date defers the complaint filing deadline by a period corresponding to half the time by which the bid submission period is extended.

Subject to the second paragraph, an amendment made less than three days before the tender closing date results in a two-day deferral of that deadline.”

177. Section 31 of the Regulation is amended

(1) by inserting “specifying the filing deadline for complaints under section 21.0.6 of the Act, which is determined by adding to the date of the notice a period corresponding to half the time for receiving applications for certification but which may not, however, be less than 10 days;” at the end of paragraph 1;

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

“The first, third and fourth paragraphs of section 9 apply to the certification of goods, with the necessary modifications.”

178. Section 39 of the Regulation is amended by inserting “the date of publication of the notice of intention and” after “section 13 of the Act,” in paragraph 7.

REGULATION RESPECTING SERVICE CONTRACTS OF PUBLIC BODIES

179. Section 4 of the Regulation respecting service contracts of public bodies (chapter C-65.1, r. 4), amended by section 3 of the Regulation to amend the Regulation respecting service contracts of public bodies, enacted by Order in Council 293-2016 (2016, G.O. 2, 1807), is again amended by inserting the following subparagraph after subparagraph 6 of the second paragraph:

“(6.1) the filing deadline for complaints under section 21.0.4 of the Act, which is determined by adding to the date of the notice of the call for tenders a period corresponding to half the time for receiving tenders but which may not be less than 10 days;”.

180. Section 9 of the Regulation, amended by section 7 of the Regulation to amend the Regulation respecting service contracts of public bodies, is again amended

(1) by adding the following sentence at the end of the first paragraph: “An addendum must contain the information relating to the filing deadline for complaints under section 21.0.4 of the Act or section 36 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) or specify whether the amendments made to the tender documents result from a decision of the Autorité des marchés publics.”;

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

“An amendment made before the complaint filing deadline indicated on the electronic tendering system that modifies the tender closing date defers the complaint filing deadline by a period corresponding to half the time by which the bid submission period is extended.

Subject to the second paragraph, an amendment made less than three days before the tender closing date results in a two-day deferral of that deadline.”

181. Section 43 of the Regulation is amended

(1) by replacing “in subparagraphs 1, 2 and 4 to 6” in paragraph 1 by “in subparagraphs 1, 2 and 4 to 6.1”;

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

“The first, third and fourth paragraphs of section 9 apply to the qualification of service providers, with the necessary modifications.”

182. Section 52 of the Regulation is amended by inserting “the date of publication of the notice of intention and” after “section 13 of the Act,” in paragraph 7.

REGULATION RESPECTING CONSTRUCTION CONTRACTS OF PUBLIC BODIES

183. Section 4 of the Regulation respecting construction contracts of public bodies (chapter C-65.1, r. 5), amended by section 1 of the Regulation to amend the Regulation respecting construction contracts of public bodies, enacted by Order in Council 294-2016 (2016, G.O. 2, 1810), is again amended by inserting the following subparagraph after subparagraph 6 of the second paragraph:

“(6.1) the filing deadline for complaints under section 21.0.4 of the Act, which is determined by adding to the date of the notice of the call for tenders a period corresponding to half the time for receiving tenders but which may not be less than 10 days;”.

184. Section 9 of the Regulation, amended by section 5 of the Regulation to amend the Regulation respecting construction contracts of public bodies, is again amended

(1) by adding the following sentence at the end of the first paragraph: “An addendum must contain the information relating to the filing deadline for complaints under section 21.0.4 of the Act or section 36 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) or specify whether the amendments to the tender documents result from a decision of the Autorité des marchés publics.”;

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

“An amendment made before the complaint filing deadline indicated on the electronic tendering system that modifies the tender closing date defers the complaint filing deadline by a period corresponding to half the time by which the bid submission period is extended.

Subject to the second paragraph, an amendment made less than three days before the tender closing date results in a two-day deferral of that deadline.”

185. Section 36 of the Regulation is amended

(1) by replacing “in subparagraphs 1, 2 and 4 to 6” in paragraph 1 by “in subparagraphs 1, 2 and 4 to 6.1”;

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

“The first, third and fourth paragraphs of section 9 apply to the qualification of contractors, with the necessary modifications.”

186. Section 42 of the Regulation is amended by inserting “the date of publication of the notice of intention and” after “section 13 of the Act,” in paragraph 7.

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

187. Section 4 of the Regulation respecting contracting by public bodies in the field of information technologies, enacted by Order in Council 295-2016 (2016, G.O. 2, 1812), is amended by inserting the following subparagraph after subparagraph 10 of the second paragraph:

“(10.1) the filing deadline for complaints under section 21.0.4 of the Act, which is determined by adding to the date of the notice of the call for tenders a period corresponding to half the bid submission period but which may not be less than 10 days;”.

188. Section 11 of the Regulation is amended

(1) by adding the following sentence at the end of the first paragraph: “An addendum must contain the information relating to the filing deadline for complaints under section 21.0.4 of the Act or section 36 of the Act to facilitate oversight of public bodies’ contracts and to establish the Autorité des marchés publics (*insert the year and chapter number of that Act*) or specify whether the amendments to the tender documents result from a decision of the Autorité des marchés publics.”;

(2) by replacing “closing time; if that 7-day period cannot be complied with, the closing date must be extended” in the second paragraph by “closing date; if that 7-day period cannot be complied with, the closing date must be deferred”;

(3) by inserting the following paragraphs after the second paragraph:

“An amendment made before the complaint filing deadline indicated on the electronic tendering system that modifies the tender closing date defers the complaint filing deadline by a period corresponding to half the time by which the bid submission period is extended.

Subject to the second paragraph, an amendment made less than three days before the tender closing date results in a two-day deferral of that deadline.”

189. Section 52 of the Regulation is amended

(1) by inserting “specifying the filing deadline for complaints under section 21.0.6 of the Act, which is determined by adding to the date of the notice a period corresponding to half the time for receiving applications for certification but which may not be less than 10 days;” at the end of paragraph 1;

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

“The first, third and fourth paragraphs of section 11 apply to the certification of goods, with the necessary modifications.”

190. Section 54 of the Regulation is amended

(1) by replacing “in subparagraphs 1, 2 and 6 to 10” in paragraph 1 by “in subparagraphs 1, 2 and 6 to 10.1”;

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

“The first, third and fourth paragraphs of section 11 apply to the qualification of service providers, with the necessary modifications.”

191. Section 73 of the Regulation is amended by inserting “the date of publication of the notice of intention and” after “section 13 of the Act,” in paragraph 7.

REGULATION RESPECTING THE REGISTER OF ENTERPRISES INELIGIBLE FOR PUBLIC CONTRACTS AND OVERSIGHT AND MONITORING MEASURES

192. The title of the Regulation respecting the register of enterprises ineligible for public contracts and oversight and monitoring measures (chapter C-65.1, r. 8.1) is amended by striking out “and oversight and monitoring measures”.

193. Chapters I and II, section 5 of Chapter III and Chapters IV and V of the Regulation are repealed.

194. The heading of Chapter III of the Regulation is amended by replacing “TO THE CHAIR OF THE CONSEIL DU TRÉSOR” by “TO THE AUTORITÉ DES MARCHÉS PUBLICS”.

195. Section 6 of the Regulation is replaced by the following section:

“**6.** Every body mentioned in Schedule II to the Act respecting contracting by public bodies (chapter C-65.1) must designate from among the members of its personnel those who are authorized to send the information required under section 21.7 of that Act to the employees of the Autorité des marchés publics (the Authority) designated by the Authority’s chief executive officer.”

196. Section 7 of the Regulation is replaced by the following section:

“**7.** The information required under section 21.7 of that Act must be sent electronically on the form provided by the Authority, within 10 working days after the date on which the judgment relating to a finding of guilty for an offence listed in Schedule I to that Act becomes final.”

CHAPTER XI

TRANSITIONAL AND FINAL PROVISIONS

DIVISION I

AUTORITÉ DES MARCHÉS PUBLICS

§1.— *Rights and obligations*

197. The responsibilities of the Chair of the Conseil du trésor with respect to the application of Chapter V.1 of the Act respecting contracting by public bodies (chapter C-65.1) concerning ineligibility for public contracts and the rights and obligations of the Autorité des marchés financiers with respect to the application of Chapter V.2 of that Act concerning prior authorization for a public contract or subcontract become the responsibilities, rights and obligations of the Autorité des marchés publics.

The Authority becomes, without continuance of suit, party to all proceedings to which were party the Attorney General of Québec with respect to the application of that Chapter V.1 or the Autorité des marchés financiers with respect to that Chapter V.2.

198. The Regulation of the Autorité des marchés financiers under an Act respecting contracting by public bodies (chapter C-65.1, r. 0.1) in force on 1 April 2017 is deemed made by the Autorité des marchés publics under section 21.23 of the Act respecting contracting by public bodies and approved by the Conseil du trésor under section 21.43 of that Act.

The Regulation respecting the register of enterprises ineligible for public contracts and oversight and monitoring measures (chapter C-65.1, r. 8.1) in force on 1 April 2017 is deemed made by the Autorité des marchés publics under section 21.8 of the Act respecting contracting by public bodies.

Those regulations continue to apply until they are repealed, replaced or amended in accordance with the law.

199. The Fee related to an application for authorization filed by an enterprise with the Autorité des marchés financiers for public contracts and subcontracts (chapter C-65.1, r. 7.2) in force on 1 April 2017 is deemed made by the Autorité des marchés publics and approved by the Government under section 72 of this Act.

200. The processing of applications for rectification submitted to the Chair of the Conseil du trésor under section 21.15 of the Act respecting contracting by public bodies and that of the applications for authorization filed with the Autorité des marchés financiers with respect to the application of Chapter V.2 of that Act that are pending on 31 March 2017 are continued by the Autorité des marchés publics as of 1 April 2017.

§2.—*Human resources*

201. Subject to the conditions of employment applicable to them and compliance with the minimum hiring requirements prescribed by section 5, the employees of the public contracts and money-services businesses directorate of the Autorité des marchés financiers who, on 31 March 2017, are assigned more specifically to matters related to the application of Chapter V.2 of the Act respecting contracting by public bodies and five advocates designated by the Autorité des marchés financiers who, at that date, exercise certain functions related to the application of that chapter become, without further formality, employees of the Autorité des marchés publics on 1 April 2017. They retain the same conditions of employment.

The designation provided for in the first paragraph is made so as to ensure the continuity of activities and the transition required with respect to the application of Chapter V.2 of the Act respecting contracting by public bodies.

202. Subject to the conditions of employment applicable to them and compliance with the minimum hiring requirements prescribed by section 5, the employees of the secretariat of the Conseil du trésor who, on 31 March 2017, are assigned more specifically to matters related to the application of Chapter V.1 of the Act respecting contracting by public bodies become, without further formality, employees of the Autorité des marchés publics on 1 April 2017. They retain the same conditions of employment.

In addition, subject to the conditions of employment applicable to them and compliance with the minimum hiring requirements prescribed by section 5, the employees of the Ministère des Transports who, on 31 December 2016, hold a position as internal auditor assigned to a territorial directorate or as investigator within the investigations and internal audit directorate become, without further formality, employees of the Autorité des marchés publics on 1 January 2017. They retain the same conditions of employment.

203. An employee transferred to the Autorité des marchés publics under section 202 may apply for a transfer to a position in the public service or enter a promotion-only qualification process in accordance with the Public Service Act (chapter F-3.1.1) if, on the date of transfer to the Authority, he or she was a public servant with permanent tenure.

Section 35 of the Public Service Act applies to an employee who participates in such a promotion-only qualification process.

204. If an employee referred to in section 203 applies for a transfer or enters a promotion-only qualification process, the employee may apply to the Chair of the Conseil du trésor for an assessment of the classification that would be assigned to the employee in the public service. The assessment must take account of the classification that the employee had in the public service on the date of transfer as well as the years of experience and the level of schooling attained while employed by the Authority.

If an employee is transferred under section 203, the deputy minister or chief executive officer whom the employee comes under must assign to the employee a classification compatible with the assessment provided for in the first paragraph.

If an employee is promoted under section 203, the employee must be given a classification on the basis of the criteria set out in the first paragraph.

205. If some or all of the operations of the Autorité des marchés publics are discontinued or if there is a shortage of work, an employee referred to in section 202 is entitled to be placed on reserve in the public service with the classification the employee had prior to the date on which the employee was transferred.

In such a case, the Chair of the Conseil du trésor determines, if applicable, the employee's classification on the basis of the criteria set out in the first paragraph of section 204.

206. A person referred to in section 202 who, in accordance with the applicable conditions of employment, refuses to be transferred to the Autorité des marchés publics remains assigned to the Authority until the Chair of the Conseil du trésor is able to place the person in accordance with section 100 of the Public Service Act.

§3.—*Registers, documents and miscellaneous measures*

207. The files, records, guides, forms and other documents of the Chair of the Conseil du trésor resulting from the application of Chapter V.1 of the Act respecting contracting by public bodies and those of the Autorité des marchés financiers resulting from the application of Chapter V.2 of that Act become files, records, guides, forms and other documents of the Autorité des marchés publics.

208. The information assets related to the application of Chapter V.1 of the Act respecting contracting by public bodies, with all the related rights and obligations, are transferred to the Autorité des marchés publics.

The data held by the Autorité des marchés financiers for the purposes of Chapter V.2 of that Act in its information assets are transferred to the Autorité des marchés publics.

209. The expression “Autorité des marchés financiers” is replaced by “Autorité des marchés publics” wherever it appears in the following Acts, regulations and orders:

(1) The Charter of Ville de Montréal (chapter C-11.4);

(2) The Fee related to an application for authorization filed by an enterprise with the Autorité des marchés financiers for public contracts and subcontracts (chapter C-65.1, r. 7.2); and

(3) any order made for the purposes of Chapter V.2 of the Act respecting contracting by public bodies and orders made under section 86 of the Integrity in Public Contracts Act (2012, chapter 25).

DIVISION II

OTHER PROVISIONS

210. The Government may, by regulation made before (*insert the date that is 18 months after the date of coming into force of this section*), enact any other transitional measure required for the carrying out of this Act.

A regulation made under the first paragraph may, if it so provides, has effect from a date not prior to (*insert the date of coming into force of this section*).

211. Complaints about a public body’s tendering and awarding processes for construction contracts, architecture services or engineering contracts or public-private partnership contracts may only be filed with regard to the processes that begin after 31 August 2017.

Complaints about a public body’s tendering and awarding processes for information technology-related supply contracts or service contracts may only be filed with regard to the processes that begin after 28 February 2018.

Complaints about a public body’s tendering and awarding processes for contracts other than those mentioned in the first and second paragraphs may only be filed with regard to the processes that begin after 31 August 2018.

DIVISION III

FINAL PROVISIONS

212. This Act may be cited as the “Act respecting the Autorité des marchés publics”.

213. The minister who is Chair of the Conseil du trésor is responsible for the administration of this Act.

214. Sections 24, 78 and 79 of the Integrity in Public Contracts Act (2012, chapter 25) come into force on 1 April 2017.

215. This Act comes into force on (*insert the date of assent to this Act*), except

(1) subparagraph 1 of the first paragraph of section 18, paragraph 2 of section 20, section 21 to the extent that it concerns the contract management of a body referred to in paragraph 2 of section 20, sections 22 to 26, subparagraphs 1 and 3 to 6 of the first paragraph of section 27 and the second paragraph of that section, section 28, subparagraph 2 of the first paragraph of section 29 to the extent that it concerns the contract management of a body referred to in paragraph 2 of section 20 as well as subparagraphs 3 and 4 of the first paragraph and the second, third and fourth paragraphs of section 29, sections 31 and 53 to 57, the first paragraph of section 58, sections 60 to 65, section 117 to the extent that it concerns section 25.0.1 of the Act respecting contracting by public bodies (chapter C-65.1) which it enacts, section 159, the second paragraph of section 202 and sections 203 to 206, which come into force on 1 January 2017;

(2) subparagraphs 2 and 3 of the first paragraph of section 18, paragraphs 3 and 4 of section 20, subparagraph 5 of the first paragraph of section 29, sections 81 and 84 to 113, paragraph 1 of section 115 to the extent that it

concerns the repeal of paragraphs 8 to 13 of section 23 of the Act respecting contracting by public bodies, section 117 to the extent that it concerns the enactment of sections 25.0.2 and 25.0.3 of that Act, sections 122 to 125, 128, 130, 132, 134 to 155, 157, 158, 164 to 172 and 192 to 201, the first paragraph of section 202 and sections 207 to 209, which come into force on 1 April 2017;

(3) paragraph 1 of section 20, section 21 to the extent that it concerns the audit of the tendering or awarding process for a public contract, subparagraph 2 of the first paragraph of section 27, subparagraph 1 of the first paragraph of section 29 and subparagraph 2 of the first paragraph of that section to the extent that it concerns the tendering or awarding process for a public contract, sections 33 to 52, the second paragraph of section 58 and sections 59, 78 to 80, 82, 83, 120, 121, 156 and 173 to 191, which come into force on 1 September 2017;

(4) subparagraph 4 of the first paragraph of section 18, section 114 and paragraph 2 of section 115 to the extent that it concerns paragraph 13.1 of section 23 of the Act respecting contracting by public bodies, which come into force on the date or dates set by the Government.

